United States Court of Appeals
for the Second Circuit

APPENDIX

NO. 76-6156

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UNITED STATES COURT *of* APPEALS

FOR THE SECOND CIRCUIT

SAMUEL M. KAYNARD, REGIONAL DIRECTOR OF
REGION 29 OF THE NATIONAL LABOR RELATIONS
BOARD, FOR AND ON BEHALF OF THE NATIONAL
LABOR RELATIONS BOARD

Plaintiff - Appellant

v.

JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY
AND PENSION COMMITTEE, JOINT INDUSTRY BOARD OF
THE ELECTRICAL INDUSTRY, AND TRUSTEES OF THE
PENSION HOSPITALIZATION AND BENEFIT PLAN OF THE
ELECTRICAL INDUSTRY, AS NAMED IN APPENDIX A,

Defendants - Appellees.

UNITED STATES COURT OF APPEALS
FILED
NOV 29 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ON APPEAL FROM AN ORDER OF
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX
VOLUME II

PAGINATION AS IN ORIGINAL COPY

NO. 76-6156

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SAMUEL M. KAYNARD, REGIONAL DIRECTOR OF
REGION 29 OF THE NATIONAL LABOR RELATIONS
BOARD, FOR AND ON BEHALF OF THE NATIONAL
LABOR RELATIONS BOARD,

Plaintiff-Appellant

versus

JOINT INDUSTRY BOARD OF THE ELECTRICAL
INDUSTRY AND PENSION COMMITTEE, JOINT
INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY,
AND TRUSTEES OF THE PENSION HOSPITALIZATION
AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY,
AS NAMED IN APPENDIX A,

Defendants-Appellees

On Appeal from an Order of
the United States District Court
for the Eastern District of New York

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VOLUME II

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th REGION

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In the Matter of: :

JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY :
AND PENSION COMMITTEE, JOINT INDUSTRY BOARD OF
THE ELECTRICAL INDUSTRY AND TRUSTEES OF THE PENSION:
HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL
INDUSTRY, AS NAMED IN APPENDIX A OF THE COMPLAINT :

Case No.
-and- :29-CA-49

LOCAL 277, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, :
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.
:
---x

16 Court Street
Brooklyn. New York
July 19,1976

The above entitled matter came on for hearing, pursuant to Notice at 11:00 A.M.

BEFORE:

MAX ROSENBERG, Administrative Law Judge

APPEARANCES:

IRWIN GELLER, ESQ.	Donald F. Menagh, Esq.,130 East 40thStreet, New York, New York, appearing on behalf of the Respondent.
ELLIOT D. SHRIFTMAN,ESQ.	Cohn, Glickstein, Lurie, Ostrin and Lubell, Esqs., 1370 Avenue of the Americas, New York, New York, appearing on behalf of the Petitioner.
HOWARD EDELMAN,ESQ.	16 Court Street, Brooklyn, New York, appearing on behalf of General Counsel.

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explicitely noted in the Answer, paragraph one, which is trustees of the pension hospitalization and benefit plan of the Electrical Industry.

We merely hope to thereby preserve our right to raise the issue of a variance between the charge and the complaint.

Otherwise, paragraph one of the complaint is admitted.

JUDGE ROSENBERG: The real hassle is only the legal conclusion to be drawn.

The violations, say, were to be found whether or not paragraph -- or rather your assertion in the complaint that all three of these entities constitue a single integrated employer.

If they do, the fact that the trustees were not served then becomes inconsequential.

MR. GELLER: I would just hope, your Honor, to reserve my rights to direct an argument to that point in the brief or some subsequent level.

Otherwise, as we'll ascertain later, there's no contention that these are separate entities for the purpose of this single and limited proceeding.

JUDGE ROSENBERG: I assume that the admission goes to 1A and B in the same way?

MR. GELLER: Correct.

MR. EDELMAN: With respect to two, can we get any kind of admission?

MR. GELLER: Here again, your Honor, we are concerned with the question solely of law and not of fact.

We will maintain, and perhaps bringing it up now will make it unnecessary to just preserve my rights by way of a motion, that the National Labor Relations Act as amended, does not extend to non-profit, non-commercial employers of this sort.

We don't believe the issue has been adequately resolved or tested.

Again, we wish to reserve our legal rights that we are not an employer within the meaning of the Act.

Otherwise, the only problem that we have with paragraph two are the words, "employees and," that appear approximately eight lines down in the paragraph.

We do not understand it and we tend to think that it is an error.

MR. EDELMAN: It is.

That would be employers. It should be employers.

Quite right.

JUDGE ROSENBERG: What are you talking about?

Is this paragraph two of the complaint?

MR. EDELMAN: Yes.

JUDGE ROSENBERG: Eight lines down?

MR. GELLER: Yes, it is eight lines down in the middle of the line.

JUDGE ROSENBERG: Capital employers instead of capital employees?

MR. EDELMAN: Yes.

MR. GELLER: In that case, with the clarification noted, we will admit Paragraph 2.

MR. EDELMAN: I'll amend the complaint, your Honor, to change the word employees in paragraph two to employers.

JUDGE ROSENBERG: The motion to amend is granted.

How about pargraph three A of the complaint?

MR. GELLER: Your Honor, there's a bit of a question about that.

Hopefully, it won't be material that we iron out the doubts existing there.

I think any questions will be rendered mutually by what we do with paragraph three C.

But here let me note that the origins of the pension committee are not one hundred percent clear even in my mind.

There's some contention that it was not established by the joint industry board but rather exists pursuant to another agreement.

But it's relationship to the joint industry board won't be effected by that.

JUDGE ROSENBERG: Any doubt as to whether or not the individuals named in Appendix A are the trustees?

MR. GELLER: At this point there is no doubt from the time of answering.

I did have a question as to whether the designation trustees matched the description in the employee retirement income Security Act of 1974.

A very technical definition is found.

I wasn't sure of it.

Now, I'm confident for the purpose of this proceeding, paragraph three B is admitted.

JUDGE ROSENBERG: How about 3C?

MR. GELLER: Now, 3C, again, let me clarify why we answered one way in our answer and why we will change our answer at this point.

When I read 3C saw the common officers, directors and trustees.

We do admit that some office trustees are in common, a number of them are.

I intepreted that to mean all of the officers overlap and that is not the case.

JUDGE ROSENBERG: With that clarification, do you now admit 3C?

MR. GELLER: With the further qualification, the phrase, "single integrated enterprise", rephrase by the phrase, "an integrated enterprise," for the purpose of this Act.

MR. EDELMAN: I have no qualms with that.

I can so amend the complaint accordingly.

MR. GELLER: I would note at this time that there are different enterprises in other respects, especially for tax purposes.

JUDGE ROSENBERG: For the purpose of this proceeding?

MR. GELLER: Correct.

JUDGE ROSENBERG: That's admitted, then, for the purpose of this proceeding.

MR. GELLER: Very good.

JUDGE ROSENBERG: Granted.

How about paragraph 4?

MR. EDELMAN: Excuse me, your Honor, I take it 3A was admitted?

JUDGE ROSENBERG: Yes, with the qualification.

How about paragraph 4?

There's a denial with respect to the phrase, "goods and material valued in excess -- et cetera."

Any question that this claimant didn't receive goods or material from points outside of the State of New York?

MR. GELLER: No, there's no denial in the answer, that's admitted.

I may have confused the issue by the number of the paragraph.

JUDGE ROSENBERG: I'm sorry.

So, paragraph 4 is admitted, is that correct?

MR. GELLER: Correct.

JUDGE ROSENBERG: Five?

MR. GELLER: Well, that let us hasten to amend and stipulate that there has been goods and material valued in excess of $50,000 received indirectly from other states.

They are not received directly by any of the Respondents.

JUDGE ROSENBERG: That amounts to the same hill of beans.

MR.EDELMAN: I'll amend the complaint to replace directly with indirectly, no problem.

MR. GELLER: On those terms, it's admitted.

MR. EDELMAN: Well, in that case can we amend the complaint that the goods received valued in excess of $50,000 were received from firms who in turn the goods directly from outside the State of New York?

MR. GELLER: To the best of our knowledge, that's an accurate statement.

JUDGE ROSENBERG: How about paragraph 6?

MR. GELLER: In our paragraph 5 and the answer we deny the allegations of paragraph 6 and we are repeating that denial.

We are not engaged in commerce, we are non-commercial.

JUDGE ROSENBERG: In other words, you get back to the --

MR. GELLER: To the legal argument.

MR. EDELMAN: I have no quarrel with Respondent desire to make a legal argument.

I'm not going to press it.

JUDGE ROSENBERG: Paragraph 7 is admitted, I take it?

MR. GELLER: Yes, it's admitted.

JUDGE ROSENBERG: Paragraph 8A and B I see is admitted, is admitted with respect to the supervisory status of Dr. Sydney Krauss and Joseph D'Angelo.

You've denied that they were agents when they acted on behalf of the Respondent?

MR.GELLER: We deny that, yes.

We say that --

JUDGE ROSENBERG: What are you asserting then, whatever they did they did on their own?

MR.GELLER: In one case, in the case of one individual in particular, we feel that too, well, could we simply deny that for the time being and get to the argument at some later point?

JUDGE ROSENBERG: Tell me what the argument is going to be.

If ther's an objection I've got to know so I can rule intelligently on it.

MR. GELLER: If it is shown that one or the other committed one of the acts, Respondent will then show that it was committed against explicit expressed instructions not to commit such acts and therefore this was really under the scope of any employment --

JUDGE ROSENBERG: Reverse Nuremberg defense?

MR.GELLER: I see your point, but I think there some come a point --

JUDGE ROSENBERG: All right, you admit or deny?

MR.GELLER: Well, we deny agents and in the same paragraph 8A, would the General Counsel kindly amend paragraph 8A to correct the spelling of Joseph D'Angelo, D-'A-n-g-e-l-p?

JUDGE ROSENBERG: The amendment is granted.

MR. EDELMAN: I take it admission, your Honor, with respect to 8A still goes to the supervisor within the meaning of the Act, although they are denying the agency aspect.

MR. GELLER: Yes.

JUDGE ROSENBERG: Right.

You deny then, 8B?

MR. GELLER: Yes.

JUDGE ROSENBERG: Accepting that I would imagine that Brunetto is the assistant director of the dental clinic?

MR. GELLER: His title is assistant to the director of the dental clinic and I think we'll show there's some difference in status there.

Of course, your Honor, we're not denying that any employee is an agent of the employer within the scope of his employment.

We understand there's a special category known as an agent of management, we think that's what the General Counsel had in mind in granting paragraph 8B, that even though Brunetto is not a supervisor he will qualify as an agent of management.

JUDGE ROSENBERG: Is that what you meant?

MR. EDELMAN: Well, I think we'd like to amend the complaint to indicate agent and supervisor.

JUDGE ROSENBERG: First, let's get to his title.

Do you agree with Mr. Geller that the man is the assistant to the director?

MR. EDELMAN: Yes, I agree with the title.

JUDGE ROSENBERG: You want to amend the thing to indicate he is not only an agent, but a supervisor?

MR. EDELMAN: Right.

JUDGE ROSENBERG: Do you have any objection to that amendment, Mr. Geller?

MR.GELLER: Was that only to assistant to thedirector?

MR. EDELMAN: Yes.

MR. GELLER: Well, I have no objection to his right to amend it, but I just redouble my denial.

JUDGE ROSENBERG: You deny that he is either?

MR. GELLER: Either, correct.

JUDGE ROSENBERG: How about 9?

The appropriate necessity of a dentist unit?

MR. GELLER: Yes, we deny it.

JUDGE ROSENBERG: On what grounds?

MR. GELLER: Well, primarily on the grounds that we've heard before that the employer is non-commercial and not subject to the Act, therefore there cannot be an appropriate in this employer.

There was a previous representation matter in which I did not participate personally, but --

JUDGE ROSENBERG: Was that issue, Mr. Geller, raised in the R case, non-commercial --

MR. EDELMAN: Your Honor, maybe I can help in this area.

There was an R. case decision.

The issue was not raised at the time because counsel for Respondent did not raise it, nor did he actually appear in the proceeding, except to note an appearance.

Following his appearance he then left.

It was not Mr. Geller at the time.

The decision at issue was the Tropicana decision, the unit was found to be appropriate, there was an appeal to the Board and the appeal was denied.

I intend to introduce those.

However, at this point it might be a good point, perhaps, to introduce those two documents and we can perhaps introduce them by way of stipulation.

JUDGE ROSENBERG: Why don't we have them marked as 2 and 3?

MR. EDELMAN: Can you mark the decision as General Counsel's 2 and Teletype as General Counsel's Exhibit 3?

(Whereupon, General Counsel's Exhibit 1 was received into evidence.)

(Whereupon, documents referred to were marked General Counsel' Exhibits 2 and 3 respectively for identification.)

MR. GELLER: Your Honor, if it's appropriate, I believe you asked me whether the issue of commerce or the non-commercial nature of the employer was raised at the R hearing and I see in my file that the request for review does contain an objection along that line specifical

JUDGE ROSENBERG: Is the request for review part of General Counsel's 2 and 3?

MR. GELLER: No, your Honor.

JUDGE ROSENBERG: They are received.

(Whereupon, General Counsel's Exhibits 2 and 3 heretofore marked for identification, were received into evidence.)

MR. EDELMAN: Your Honor, if I may, just to get rid of those documents that we should be able to introduce by stipulation, I would at this point like to offer as General Counsel's Exhibit 4 the order permitting withdrawal of the petition.

If I may state, to clarify the record, the decision issued an election was ordered, election was scheduled for the 21st, for the 21st of May.

At that time an election was held and there were 29 votes cast, all of which were challenged, the ballots were then impounded.

The employer filed certain objections which are set forth in the order withdrawning the petition.

Prior to an investigation of the, and prior to any opening of the ballots, the Petitioner requested a withdrawal of its petition and the petition, the request was granted and at this point what I would like to do is introduce the order permitting the withdrawal, which sets forth a lot of facts I've just stated.

MR. GELLER: Your Honor, may I ask General Counsel to

JUDGE ROSENBERG: Let me interrupt for a minute.

Mr. Geller, will there be any contention on the part of the Respondents that assuming the unit was appropriate that when the demand was made rather then when the election took place, that the union represented the majority of the 30 dentists?

MR.GELLER: We don't know.

JUDGE ROSENBERG: Were you ever shown cards?

MR.GELLER: No.

JUDGE ROSENBERG: Did you ever ask for them?

MR. GELLER: Yes, or at least I'm not sure whether the answer can be yes in that form.

We did indicate doubts, expressed doubts to the Teamster organizer or officer.

I don't know if there was a request, show me cards, I don't know that.

But there was doubt expressed.

JUDGE ROSENBERG: At least there was refusal to recognize the union on the asserted majority, is that correct?

MR. GELLER: Yes.

JUDGE ROSENBERG: You intend, Mr.Edelman, to prove the majority of the union card-wise?

MR. EDELMAN: Yes, I do, right.

JUDGE ROSENBERG: You have this case set for three days?

MR. GELLER: I don't know if it's jumping the gun, these dental assistants are represented by a union.

If that's what you're getting at --

JUDGE ROSENBERG: They're represented by another union?

When did this happen?

MR. EDELMAN: This was prior to any union organization of the dentists.

They have been represented by certainly at all times material herein prior to February of 1976 by some other union.

MR. GELLER: About 20 years, I'm advised.

JUDGE ROSENBERG: Still represented?

Mr. EDELMAN: They're closed, discharged.

JUDGE ROSENBERG: Were they represented as of the time the clinic shut down?

MR.EDELMAN: Yes, to my knowledge.

JUDGE ROSENBERG: What's the name?

MR.GELLER: Local 153 of the Office, Professional Employees International Union.

JUDGE ROSENBERG: Did they ever grip about the fact to file any charges in this case?

MR. EDELMAN: To my knowledge, they did not.

JUDGE ROSENBERG: The Teamsters is carrying the ball for them with respect to their discharge?

that was the sole cause of every single event that led to the shut down.

Even if we are incapable of demonstrating the economization, may I ask this one rhetoric question.

Can it be imagined the faith of the dental department would limit the benefit, such as the dental benefit, in these economic times because some dentists hope to select a collective bargaining agent.

Is it reasonable to believe that that is conceivable?

Your Honor, I made reference to these economic times.

Let me explain that because I believe that the General Counsel's case is based, at least in part, upon a fallacy, that it be best to explore and explode at the outset.

The construction industry in this area is in trouble and has been for a while.

The contributions payable tothe pension committee of the Joint Industry Board are a percentage of the payrolls of a electrical contractors.

When payrolls slip for lack of work, the income of the pension committee slips likewise.

However, when a commercial employer finds that its income is down, it cuts expenses.

For an employee welfare benefit plan, the income expense relationship is practically the opposite.

As times get worse, the benefit plan's expenses become greater.

Because beneficiaries look more to the benefit plan in their hour of financial need.

So, the benefit plan, because it is busier, this does not mean that business is good.

It means business is bad.

Limited resoures are going out faster than they can be replaced.

Up to a point this can be tolerated.

Respondent however has passed that point and that is why it shut down the dental department when it did in the face of a heavy load of work.

The patients being threatened were not in the common sense of the word, paying customers, please keep in mind.

Therefore, your Honor, that being busy does not necessarily mean making money and in the case at bar either means losing money or losing the quality of overall service rendered.

JUDGE ROSENBERG: Let me interrupt for a minute and ask you this, Mr. Geller.

Do the patients pay anything for this service?

MR.GELLER: I believe in one area.

They're responsible for paying part ofthe prosthetics.

JUDGE ROSENBERG: How about the run of the mill?

MR.GELLER: Nothing.

Of course, the employees contribute a percentage of the payroll.

JUDGE ROSENBERG: There isn't any substantial out-of-pocket expense to the patient?

MR. GELLER: Nothing except they pay part of it towards prosthetics, nothing.

Your Honor, if it could have been otherwise, if it would have been possible to continue the dental benefits then we would have done more than was human to continue that benefit.

If we could have prolonged that benefit for a second, it would have been done.

JUDGE ROSENBERG: The reason I interrupted, is that I'm trying to understand you now.

You say that the plan got busier?

MR. GELLER: Yes.

JUDGE ROSENBERG: Now, because people aren't working they go to their dentists?

MR. GELLER: They don't go to their own dentist.

It costs money, they go to the free clinic, free dental department and there are other parts of the plan that get busier too.

All the other welfare benefits that stem from this plan.

I might add, although we hope to show this by testimony, that the 35,000 members of Local 3 and the many members who are covered with their families as well, they live all over the New York Metropolitan region and this department is located in Flushing, Queens.

In good times, people much prefer to minimize the amount of time that it takes to travel to their dentist and only some people who used the clinic.

In bad times, that consideration is reduced.

The fact is, the work load became greater and greater when people stopped using their private dentists.

JUDGE ROSENBERG: So that's what that line was directed to?

MR. GELLER: Yes.

We will anticipate a showing that -- well, I'd rather not go into that, but that's where we're going.

Now the effect of cutting off the dental benefit was not the result of an option to maximize profit, as would be the corresponding motive in private industry.

We are concerned with the loss of years of our lives developing these facilities.

Developing these for so many people was done at the great expense of time and energy and the life of many people here.

AFTERNOON SESSION

JUDGE ROSENBERG: On the record.

Do you want to call your first witness?

MR. EDELMAN: Before I call the first witness, perhaps we can get a stipulation perhaps with the 13 cards that were looked over during intermission.

That the following dentists signed the cards and that the dates with one exception is the date that they signed the card, that they read the card, the signature on the card is their signature and the names are referred to would be Dr. Egar Nash, Dr. Jules Manford, Dr. Monty Greenwood, Dr. John Warren, Dr. Joseph D. Morano, Dr. Gerald Nesse, Dr. Irving Nachbar, Dr. Gus Goldberg, Dr. Joseph Alcalay, Dr. MorrisRoss, Dr. Theodore Ziges, Dr. Stephen Rosen and Dr. Felix Glass.

I think what I'd like to do, your Honor, is offer these as General Counsel's -- with respect to the cards signed by Dr. Alcalay, the date on the card is indicated March 15th.

However, Dr.Alcalay states that he signed it on a Sunday, at the meeting, and that the card was misstated and correctly should be dated March 14th.

JUDGE ROSENBERG: Let me ask you this, Mr. Geller.

Do you stipulate as to the authenticity of all those cards?

MR. GELLER: Well, I would prefer to do it this way, that if these people were named or were to be testified this is what they would testify to and I have absolutely no reason to disbelieve them and no way to disprove it.

JUDGE ROSENBERG: You so stipulate, then?

MR. GELLER: I cannot stipulate that the dates are correct.

JUDGE ROSENBERG: I said the authenticity of their signatures.

MR. GELLER: Oh, the authenticity of the signatures, yes.

JUDGE ROSENBERG: What about the dates?

MR. GELLER: They say they signed these on the dates.

JUDGE ROSENBERG: You do not controvert the accuracy?

MR. GELLER: Right.

MR. EDELMAN: I would propose that they could be admitted into evidence then by stipulation as General Counsel's Exhibit 5.

JUDGE ROSENBERG: Through whatever.

Five is who?

MR. EDELMAN: Five would be A through whatever 13th letter of the alphabet.

JUDGE ROSENBERG: What's the name of the signature of five?

MR. EDELMAN: Felix Glass.

JUDGE ROSENBERG: Dated when?

MR. EDELMAN: March 17th.

JUDGE ROSENBERG: We'll go off the record while the Reporter marks all of those.

(Whereupon, documents referred to were marked General Counsel's Exhibits 5A through 5L for identification.)

JUDGE ROSENBERG: On the record.

MR. EDELMAN: I take it the following names that we're stipulating will indicate the individuals' name, signed the card is the signature that which appears on the card and he dated it and that he read it.

We have number five, Dr. Glass' card.

Five A is Dr. Rosen, 5B =-

JUDGE ROSENBERG: Wait a minute.

Dated when?

MR. EDELMAN: Dr.Glass is 3/17.

Dr.Rosen is 3/19.

Dr. Eiges is 5B and dated 3/20.

Dr. Ross, 5C, and dated 3/22.

Dr. Alcalay is 5D. Dated 3/15.

The card was signed on 3/14.

The date is incorrect.

Dr. Goldberg is 5E, dated the 14th.

5F is Dr. Nachbar dated 3/14.

A62

5G is Dr. Gerald Nesse, dated 3/14.

H is Dr. Vierno, dated 3/14.

I is Dr. Warren dated 3/14.

JUDGE ROSENBERG: Wait a minute, the one before that was Vierno?

MR. EDELMAN: Dated 3/14.

JUDGE ROSENBERG: Warren was what?

MR. EDELMAN: I, dated 3/14.

Dr. Greenwood, 5J, dated 3/14.

Dr. Manford, 5K, dated 3/14.

Dr. Nash, 5L, dated 3/14.

I am offerring those cards into evidence.

MR. GELLER: No opposition.

JUDGE ROSENBERG: All right, General Counsel's Exhibit 5 through 5L are admitted.

(Whereupon, General Counsel's Exhibit 5A through 5L were received into evidence.)

MR. EDELMAN: I would like to have these payroll records marked as General Counsel's Exhibits 6A through H.

(Whereupon, documents referred to were marked General Counsel's Exhibit 6A through 6H for identification.)

MR. EDELMAN: With respect to the payroll, there is a yellow line on the top sheet of each payroll and the yellow line on the bottom of the second page.

MR. EDELMAN: In that case, your Honor, I think there are certain witnesses that counsel for the General Counsel can release.

JUDGE ROSENBERG: Why don't we take a five minute recess while you decide who to release.

(Whereupon, a short recess was taken.)

JUDGE ROSENBERG: On the record.

Mr. Edelman?

MR. EDELMAN: Your Honor, at this time counsel for the General Counsel would like to call Anthony Distinte.

Whereupon,

ANTHONY DISTINTE

called as a witness, having been first duly sworn by Judge Rosenberg, was examined and testified as follows:

JUDGE ROSENBERG: Be seated.

Give your full name and address.

THE WITNESS: Anthony Distinte, 27 Union Square, West, New York City.

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Distinte, are you employed by Local 277?

A Yes.

Q What is your position?

A President and business representative.

Q How long have you been president and business representative?

A 20 years.

Q I direct your attention, Mr. Distinto, to a date on or about March 5, 1976 and ask you if you recall meeting any dentists employed by the Joint Board Clinic?

A Yes.

Q Did the meeting take place on or around March 5th?

A In my office, yes.

Q That's in Union Square?

A Yes.

Q Do you recall the time of day the meeting took place?

A About 8:00 A.M. in the morning.

Q Do you recall who was present?

A There was Mr. Morano, Kramer, Goldberg and Warren.

Q These are all doctors, I take it?

A Yes.

Q Can you describe what took place in the course of this meeting?

A I had been called prior to this meeting, relative to procedures of joining a union and we arranged a meeting.

Q Do you recall who had telephoned you prior?

A I had received anonymous calls to begin with.

Thereafter, there was a reluctance on the part of them to give names and they came into the office on the

Friday, the 5th of March.

Q These individuals?

A That's right.

Q Can you describe what took place in your office?

A We discussed the procedures of organizing and arranging for a meeting on the 14th and told them that we would have to have a majority of the people before we would start anything.

Q Did a meeting take place on the 14th?

A It did.

Q Can you tell me where the meeting took place?

A At the Sherton in Queens.

Q That's a motor inn?

A It's a hotel and motor inn.

Q Can you tell us what day the 14th was?

A It was on a Sunday morning.

Q What time did the meeting take place, on or about?

A 10:00 o'clock.

Q Can you tell me who was present at that meeting?

A That meeting, my associate Joseph Festa and approximately 16 dentists from the clinic.

Q Can you tell me what took place at this meeting?

A We discussed the background of our local union and the procedures that would be followed assuming that there would be a decision to join the union.

Q Can you tell me what else was discussed or what else took place at this meeting?

A The question of signing cards was discussed.

We would have to have to have a majority of cards signed before we would proceed and we left the room and allowed them to review what we had discussed in the way of questions and answers.

We came back and it was unanimous that they would sign cards and join the union.

Thereafter, cards were distributed and they were signed.

Q When the cards were distributed, were you present?

A Yes.

Q And when the cards were signed, were you present?

A Yes.

Q And did you observe the individuals who were present at this meeting signing cards?

A Yes.

Q How did you happen to observe them signing cards?

A In that there were questions on the cards that seemed to be complex to them.

And we had to more or less explain to them the application as it was written.

And also we were short fountain pens too.

Q And you observed each individual present at that

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meeting signing the cards?

A More or less.

Q And what was done with the cards, if anything at this meeting?

A They were checked.

Q Who checked them?

A Joseph Festa and myself.

Q What if anything at this meeting did you tell the employees in connection with the union cards?

A That we would attempt to get voluntary recognition on the assumption that we didn't, we would file for an election.

Q Was this told to the employees before they signed the cards or after they signed the cards?

A Both, before and after

Q I show you General Counsel's Exhibit 5L, 5K, 5J, 5I, 5H, 5G, 5F, 5E, 5D, which are all dated the 14th of March with exception of the card 5D, which has been misdated, apparently.

I ask you to look at these and tell me if you recall seeing these cards on the 14th being executed by the dentists involved.

JUDGE ROSENBERG: Hasn't there already been a stipulation to that effect?

MR. EDELMAN: Yes, I just want to cover that because

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possibly ask a few questions based on them?

Only the ones that we haven't stipulated to.

JUDGE ROSENBERG: Yes.

MR. GELLER: May I ask the witness some questions?

JUDGE ROSENBERG: Yes.

VOIR DIRE EXAMINATION

Q (By Mr. Geller) Mr. Distinte, did you recognize Dr. S. Miller, S, Miller, Kramer, Levine, Krauss, and Goldfield on March the 14th?

A Did I recognize them?

Q Yes, did you know who they were by name?

A Not identifying each one to his name, but of the signing of the cards, or picking up his card.

Q How did you know Mr. Garfield signed the card that bears his name?

A Because my initials are on there and they came to me and asked me what should I put in recommendation and my initials, A.J.D., recommended by A.J.D.

Q And you put your initials there on March the 14th?

A When they came to me I put the initials on it.

Q March 14th?

A If it was signed on March 14th, that's the date it was put on there.

Q Now, were those cards signed in your presence? Did you actually see these people sign the cards?

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JUDGE ROSENBERG: Since there are 13 cards in evidence already, and if the unit admittedly or concededly consists of 31, all you need is four more, or four more cards for your majority.

MR. EDELMAN: Correct.

JUDGE ROSENBERG: Are you going to have four of these people here?

MR. EDELMAN: I believe so.

I hope so, they've been subpoenaed, some are out of town.

Some indicated they can't make it for various reasons.

I do not know who will come tomorrow.

They have all been subpoenaed.

JUDGE ROSENBERG: Well, again, I'll defer ruling on the admissibility of these cards.

Let Mr. Geller have an opportunity overnight to contest the signatures of the cards.

Do you have duplicates?

MR. EDELMAN: I do not.

JUDGE ROSENBERG: You can Xerox them?

MR. EDELMAN: Right.

In addition, as long as Mr. Geller is apparently willing, seems to be willing to base his objection as to the legitimacy of the cards on the signature, there is a card that I would like to have marked that I will not be able to have a witness come down andidentify because the witness has deceased and that would be -- I'll mark it 5T.

JUDGE ROSENBERG: Do you need that card to establish a majority?

MR. EDELMAN: I want any card I can get in, your Honor.

JUDGE ROSENBERG: If it's conceded the union represented a majority of people on the date of the demand, then why throw in some more trash?

MR. EDELMAN: I won't if it is so stipulated.

I will not.

JUDGE ROSENBERG: It's been conceded up until now that you have 13 cards.

MR. EDELMAN: That's true.

JUDGE ROSENBERG: Whose signatures have been proven, stipulated to be authentic, since in that absence of evidence to the contrary, Mr. Geller, I guess exceeds to the timeliness of the cards and the dates that appear thereon.

Now, you have 13 our of 17 of the majority and all you need is four more.

MR. EDELMAN: It's true and I'm sure I'll pick them up.

JUDGE ROSENBERG: Let it be marked and if he wants to be gracious and kind to you and look through his records and check it --

MR. EDELMAN: If we can get a stipulation as to the majority, it won't be necessary.

JUDGE ROSENBERG: I assume he doesn't know yet until he looks at the payroll signatures.

MR.EDELMAN: I'm talking about after he looks at the payroll signatures.

JUDGE ROSENBERG: Did you conclude your Voir Dire, Mr. Geller?

MR. GELLER: Yes.

Q (By Mr. Edelman) Now, Mr. Distinte, in connection with the dentists that may not have been present at this meeting, did you take any steps to obtain authorization cards from those dentists?

A Yes.

Q Can you tell me what steps you took?

A We gave six or eight cards to one or two of the dentists that were present at the meeting and they sent them into us signed.

Q Subsequently you received other signed cards?

A Right.

Q Do you recall which dentists you gave the cards to?

A Joseph Vierno and I think John Warren.

MR. EDELMAN: I'd like to have this marked as General Counsel's Exhibit 7A and B.

(Whereupon, document referred to was marked General Counsel's Exhibits 7A and 7B for identification.)

Q I show you General Counsel's Exhibits 7A nd B marked for identification.

I ask you to look at it.

JUDGE ROSENBERG: What does 7A purport to be?

MR. EDELMAN: Telegram demanding recognition on the 15th and B is the receipt.

JUDGE ROSENBERG: Receipt of the request?

MR. EDELMAN: Correct.

JUDGE ROSENBERG:And the demand again is dated the 15th?

MR. EDELMAN: Right.

Q (By Mr. Edelman) Mr. Distinto, have you ever seen those documents?

A Yes.

Q Can you tell me whether or not you're familiar with them?

A Yes.

Q Did you send those documents?

A Yes, our office sent them.

Q And the receipt, B, was received by your office?

A Yes.

MR. EDELMAN: I offer the documents, 7A and B, your Honor.

JUDGE ROSENBERG: Receipt is dated what?

MR. EDELMAN: 3/16.

JUDGE ROSENBERG: Was there any response?

MR. EDELMAN: That's what I was going to ask the witness, your Honor.

JUDGE ROSENBERG: Let me ask you this, Mr. Edelman.

The complaint alleges that on the 15th of March, 1976, the union made a demand in appropriate unit and on same date Respondent refused to bargain and recognize.

Is that the critical date from the standpoint of the alleged violation of Section 8(a)(5)?

MR. EDELMAN: Well, proceeding on a trading point theory, I think my reading of trading point, the date that of the bargaining order of issue would be the date that the unfair labor practices began.

But, nevertheless, it's factual that the demand telegram was sent on the 15th and that it was refused if not on the 15th, on the 16th or 17th, thereabouts, and the petition was filed.

JUDGE ROSENBERG: And that the union didn't represent a majority on the 15th?

MR. EDELMAN: Continuing demand.

JUDGE ROSENBERG: Suppose there are no unfair labor practices that intercede?

MR. EDELMAN: If there weren't, we wouldn't be dealing with an 8(a)(5).

JUDGE ROSENBERG: You don't mean that.

MR. EDELMAN: If there were no unfair labor practices that we would not be going on an 8(a)(5) because the bargaining order is predicated on the fact that the unfair labor practices --

JUDGE ROSENBERG: I repeat, suppose there were no unfair labor practices after the 15th of March?

MR. EDELMAN: I wouldn't assume there wouldn't be an 8(a)(5) alleged in the complaint.

JUDGE ROSENBERG: That's what I wanted to know.

We'll take a five minute recess.

(Whereupon, a short recess was taken.)

JUDGE ROSENBERG: On the record.

MR. EDELMAN: Your Honor, during the recess, Dr. Sydney Miller came in.

His card has been marked General Counsel's Exhibit 5M and at this time I would propose that the stipulations with respect to 5 through 5L be applied to Dr. Miller as well.

Counsel for Respondent has examined his card in a similar manner and I think we can --

MR. GELLER: Same stipulation.

JUDGE ROSENBERG: Which is?

MR. GELLER: As to authenticity and to the date signed.

MR. EDELMAN: And then he read the card, I take it?

MR. GELLER: Yes.

JUDGE ROSENBERG: The stipulation is received.

So that means you now have 14.

MR. EDELMAN: Yes, right.

And then M is in evidence, I take it?

JUDGE ROSENBERG: Yes, it is admitted.

How about 7A and 7B?

Have you decided to offer them?

MR. EDELMAN: Yes, I have.

JUDGE ROSENBERG: Any objection to their receipt?

MR. GELLER: No objection.

JUDGE ROSENBERG: They are received.

(Whereupon, General Counsel's Exhibits 7A and 7B, heretofore marked for identification, were received into evidence.)

(Whereupon, General Counsel's Exhibit 5M heretofore marked for identification, was received into evidence.)

Q Mr. Distinti, in connection with the telegram which is General Counsel's Exhibit 7A, did you have any communication with any representative of the Joint Board following the sending of the telegram?

A I received a phone call on the 16th of March.

Q And who did you receive it from?

A I didn't receive the call.

The girl in the office received it from Mr. D'Angelo.

Q Joseph D'Angelo?

A I believe so.

Q What if any action did you take?

A I had a number two call back, I called the number back and Mr. D'Angelo answered and wanted to know what it was all about.

I explained to him that we had his dentists signed up and that we wanted to sit down and negotiate a contract with him.

He said, do you have a majority?

I said, we'll have about 21, 22.

He said he'll get back to me.

Q That concluded the conversations?

A Just about.

Q Did anybody from the Joint Board get back to you?

A No.

Q You filed a petition on the 17th?

A I called again on the 17th, not being able to get Mr.D'Angelo thereafter we filed our petition.

Q Did you make any other calls to Mr. D'Angelo following your call on the 17th?

A On several occasions I tried to call him.

Q And what was the response?

A He was either busy, wasn't there, one thing or another.

Q Did you leave your name and phone number?

A Yes.

Q Did you ever get a response from Mr. D'Angelo or any other Joint Board official?

A No.

MR. EDELMAN: I have no further questions, your Honor.

JUDGE ROSENBERG: Mr. Geller?

MR. GELLER: Initially, was there an affidavit, Mr. Edelman?

MR. EDELMAN: There is no affidavit of this witness.

CROSS EXAMINATION

Q (By Mr. Gelbr) These are the times that you say you attempted to call Mr. D'Angelo, you were answered by one of the secretaries, were you?

A More or less.

Q What were you told at that time?

A He was in a meeting, they would give him my message.

Q In the conversation -- withdraw that, please.

You say you did have a telephone conversation with Mr. D'Angelo, Joseph D'Angelo, on March the 16th, is that

Q The first you learned of these dentists were from anonymous callers?

A That's right.

Q Did you say your Welfare plan number is in the yellow pages?

A I think so, I'm pretty sure it is.

Q Not in the white pages?

A It's in the book, I haven't exactly looked it up, but I've been told.

Q Do you know if any of your telephone numbers are in the telephone book, any portion of it?

Do you know personally whether it is in the book?

A I've been told it is in the book.

Q In the white pages or the yellow pages?

A Both, I believe.

Q But, you've never seen it?

A Not really.

MR. GELLER: Your Honor, I would object and move to strike only insofar as this may have some substantive value, but if Mr. DiStinti is saying this is the way he formed his conclusion, I've no objection to it being admitted for that purpose. I've asked what Mr. DiStinti had in his mind at the time and I'm satisfied with the response, but I do object to its having probative value.

JUDGE ROSENBERG: What difference does it make if it stipulated to and I believe they have not yet been received.

JUDGE ROSENBERG: Anything further?

MR. EDELMAN: Yes, just one or two questions.

REDIRECT EXAMINATION

Q (By Mr. Edelman) Mr. DiStinti, did the union obtain a signed card by Dr. Brunetto?

A I don't think so.

Q Dr. Brunetto at any time attend a union meeting?

A No.

Q Was Dr. Brunetto at the meeting on March 5th?

A No.

Q Any of the --

JUDGE ROSENBERG: You mean March 4th -- no, March 5th I think it was.

Q Did any of the dentists that you met with, Dr. Warren or any other dentist for that matter ever state to you or indicate to you in any way that he had prompted to seek out the Teamsters as a result of anything in connection with Dr. Brunetto?

A Quite the contrary. They seeked out the Teamsters because they said they already have AFL-CIO -- they had refused to take them when they heard they were connected with Local 3.

MR. GELLER: Objection.

JUDGE ROSENBERG: On what grounds?

MR. GELLER: That's hearsay.

JUDGE ROSENBERG: All right, sustained.

Q My question to you was, did any of the dentists indicate to you that the reason they had contacted you was because Dr. Brunetto put them up to it?

A No.

Q Did Dr. Brunetto's name ever come up in connection with any conversation that you had with any of these dentists?

A At one or two of the last meetings, prior to the election, his name did come up as to where he stood or whether he was going to be allowed to vote.

Q In connection with where he stood in the election, which was the comment made to you about the dentists?

A They were confused as to whether or not he was able to cast a ballot or not and our position was that if it wasn't we would challenge a ballot.

MR. EDELMAN: I have no further questions.

RECROSS EXAMINATION

Q (By Mr. Geller) Were you present at the polling place for this, for the election on May 21st?

A Yes.

Q Did you challenge Dr. Brunetto?

A No.

Q All ballots were already challenged, but you did not challenge any?

A No.

Q Were you present when the Board agent read for the voters the reason for the challenge?

A Yes.

Q And what was the reason for the challenge, the same basis you might have had for challenging Dr. Brunetto?

MR. EDELMAN: Objection. That calls for a conclusion of state of mind.

JUDGE ROSENBERG: Just a minute. What was the challenge that was read to you with respect to that individual?

THE WITNESS: Federal challenging was being made that they were not employees. That closed the door on any challenge that I could make.

JUDGE ROSENBERG: Overruled. He made an objection to the question, I overruled the question.

MR. GELLER: Could you read back the question?

(Whereupon, the pending question was read back by the Reporter.)

A Did my challenge have the same basis as the one that was --

Q And you didn't challenge, there was no need to?

JUDGE ROSENBERG: He testified at the time that he had any opportunity to challenge all thirty-one or thirty had already voted under challenge by Respondent.

Q Have you attended many elections, Mr. DiStinti?

A Quite a few.

Q Were you aware at the time that if the challenges based on the employers objection were overruled, that the ballots would be counted?

A Yes.

Q And, nevertheless, you did not object to Dr. Brunetto's ballot?

A There was no need to, we had twenty-two cards, twenty-one cards already signed. We were sure of our position.

Q Did you testify, Mr. DiStinti, that today you know who Dr. Brunetto is?

A More or less, yes.

Q Would you recognize him on sight?

A I might and might not if I saw him.

Q Have you ever seen him?

A I saw him on one occasion. On the day of the election when he walked out of the building.

Q That was the only time?

A Only time.

Q Do you know whether Dr. Brunetto signed a card?

A In my union?

Q Yes.

A He did not, no.

Q Now, at a certain meeting, did you say that some dentists inquired about Dr. Brunetto, about his status as a voter?

A As far as his vote, whether his vote would be important enough to do anything about it.

Q When was this meeting?

A This was about the 28th of March, someplace around there.

Q Did you hear any other reference to Dr. Brunetto other than what you've testified to?

A None really.

Q None really?

A Not that I heard any.

Q Now, on that card, the authorization card, there's a place in which there are words to the effect, who were you recommended by?

That was next to your initials, is that correct?

A Yes.

Q Do you know why that's there?

MR. EDELMAN: I'm going to object to that, your Honor. There is no relevancy in connection with this case.

MR. GELLER: I'd just like to explain that I'm asking for any policy or purpose for that entry.

JUDGE ROSENBERG: Overruled.

MR. EDELMAN: Nothing further.

JUDGE ROSENBERG: You may step down.

MR. EDELMAN: I'll call Ralph Corliss.

Whereupon,

RALPH CORLISS,

was called as a witness by and on behalf of the Employer, having been first duly sworn, testified as follows:

JUDGE ROSENBERG: Would you please state your name and address for the record?

THE WITNESS: Ralph Corliss, 210 East 68th Street, New York, New York.

DIRECT EXAMINATION

Q (By Mr. Edelman) Dr. Corliss, are you engaged in the practice of dentistry?

A I am.

Q How long have you been in practice?

A About 39 years.

Q And were you ever employed by the Joint Board?

A Yes, I was.

Q How long have you been employed by the Joint Board?

A I think it's about eight or nine years.

Q And how often did you work at the clinic, days per week?

A Three days a week. Nineteen hours.

Q And your hourly rate?

A $14.

Q And who is in charge of the clinic? Dental clinic?

A Dr. Krauss.

Q Who at the dental clinic, if you know, had the authority to hire new dentists or fire dentists?

A Dr. Krauss.

Q Did you at any time sign a union card on behalf of Local 277?

A No, I didn't.

Q Did you attend any meeting on the 14th of March?

A No.

Q Did you attend any union meeting?

A No.

Q Were you on friendly terms with Dr. Krauss?

A Yes, I was.

MR. GELLER: Objection. Characterization, subjective characterization.

JUDGE ROSENBERG: Were you angry with him?

THE WITNESS: No.

JUDGE ROSENBERG: Overruled.

Q Were you in favor of the union organization by the dentists or against it?

MR. GELLER: Objection to that.

JUDGE ROSENBERG: I'll overrule it. I assume he's attempting to show a lack of bias or whatever.

THE WITNESS: Would you repeat it, please?

Q Did you support the dentists who were attempting to unionize or were you against that?

A I was against it.

Q I direct your attention to the period of time following the close of the clinic which would be April 30th, but before the election which would be May 21st, so it would be any time between April 30th and May 21.

During this period, did you have occasion to have any conversation with Dr. Krauss?

A Yes.

Q Did you have more than one conversation?

A I believe it was two.

Q _Okay. Now, in connection with your first conversation, can you describe approximately to the best of your knowledge about how many days after the clinic closed that you had the conversation?

A I think it is about a week or so after that.

Q How did you happen to have a conversation with Dr. Krauss?

A Well, some of the men had been employed -- that was their main source of income and they were very upset and they asked me if I could come up and speak to Dr. Krauss and find out if there's any chance of re-opening the clinic.

They were really hurting.

Q In connection with re-opening the clinic?

A Yes. And I called Dr. Krauss on the phone and asked him to come up and talk to us.

Q Did you go up and speak to him?

A Pardon?

Q Did you speak to him?

A On the phone.

Q On the phone?

A Then he said yes and I came up.

Q To where?

A To his office at the clinic.

Q And you had a conversation with him?

A Yes.

Q Was anybody present?

A Nobody was present.

Q Can you tell me, please, to your best recollection what took place in this conversation?

A Well, I mentioned the fact that I was there at the request of some of the men and asked him whether there was any chance of re-opening the clinic and he was very doubtful about whether anything could be done and we started to talk and he said that he felt that negotiations between the Teamsters union and Local 3 would get nowhere.

In other words, they wouldn't be able to negotiate a settlement and pursuant to the conversation he felt that if the vote, when we had the vote to accept or reject, the Teamsters, was gainst the Teamsters union and if this, this was all his feeling.

Q This is what he stated to you, though? As his feeling?

A Yes. Meaning the fact that the decision was not his and that if the men were willing to accept reduced hours -- in other words, he claims that he had to cut the payroll because of the budget, then he felt he could go upstairs and try to convince them to open the clinic, no assurances that he would be successful.

That's about all that was stated at that meeting.

Q Following this conversation, do you recall having a subsequent conversation with Dr. Krauss?

A I had another conversation with him. I know it was on a Friday, but I don't know, I don't remember whether it was the following Friday or the one after that.

Q How did you happen to have this conversation with him?

A I was going out to the Island and had to pass the clinic, had to pick something up in that area. I called him up and said, "I will be in the neighborhood, can I come up and talk to him."

So, he said come up.

I asked him again whether anything was new, any chance of re-opening the clinic, because again everybody including myself needs this income. He said nothing much had changed and that he felt that what we discussed the last time still held.

Q Can you tell me what most of the conversation was about that took place at this time?

A Most of the conversation was about fishing, truthfully.

He's a fisherman and we were talking about fishing for a long time. And, again, it was a question of not getting anywhere with the Teamsters and I mentioned, do you think that they would accept meeting the Joint Board, or the Joint Board would accept an AFL-CIO union and he said he didn't know, we could ask.

He felt it would have been a better choice originally.

Q That's what Dr. Krauss had said?

A Yes.

Q Did the subject of negotiating with the Teamsters come up in this conversation?

A Other than the fact that he felt that it wouldn't be successful.

Q Who wouldn't be?

A A meeting with the Teamsters and the Joint Board.

Q These were Dr. Krauss' words, I take it?

A Yes.

Q Now, in connection with the conversation, first conversation that you had with Dr. Krauss, did you relate this, the results of the conversation to any of the dentists?

A Yes, I did. Because they were the ones who asked me to go up to talk to him.

Q How come they asked you to go and talk to him, if you know?

A Dr. Krauss and I had a friendly relationship. I was the next to the oldest in length of service and I think he was satisfied with the work I did, so that I had a very good relationship with him and I was able to approach him freely.

Q Were your feelings against union representation known to your fellow colleagues?

A Yes, they were.

Q How do you know this?

A Well, first of all I was never approached to join, until after it was complete. I think they felt I might go back and sort of squeal, which I never would have done.

But after they had the majority, I think then they came out into the open and a few of us old-timers had gone through a strike before, with the union, and we felt it would be a repitition of the same.

Q Did you so indicate this?

A Sure. This case was argued for three months in the lounge.

Q Your views were freely expressed?

A Yes.

Q Other dentists heard them?

A Yes.

JUDGE ROSENBERG: What union did you have a strike against?

You mentioned you had a strike against the union, which union was that?

THE WITNESS: We had formed a union years back.

JUDGE ROSENBERG: Dentists?

THE WITNESS: Yes.

JUDGE ROSENBERG: At the clinic?

THE WITNESS: Yes.

JUDGE ROSENBERG: Independent union?

THE WITNESS: Yes.

Q And you represented the majority of the dentists in the independent union situation?

A I didn't represent them --

Q The union had represented a majority?

A Yes.

Q And there was a strike?

A Yes.

Q The strike was for recognition to get the Joint Board to baegain with the union?

A Yes, to accede to certain demands that were made.

Q Bargaining and demands?

A Bargaining.

Q Were you successful?

A No.

Q What was the ultimate outcome?

A The men returned to work.

Q Abandoned the union?

A Yes.

MR. GELLER: Your Honor, I'll object to that last question and answer. I think it calls for a conclusion beyond the capability of this particular witness as to whether they abandoned the union or not.

JUDGE ROSENBERG: It should be obvious, isn't it? Overruled.

That's why we're here with Local 277, I guess.

MR. EDELMAN: I have no further questions, your Honor.

MR. GELLER: I'd like to see the affidavit.

JUDGE ROSENBERG: Let's break for five minutes.

(Whereupon, a short recess was taken.)

JUDGE ROSENBERG: On the record.

MR. GELLER, do you have any cross examination?

MR. GELLER: Yes, I do.

CROSS EXAMINATION

Q (By Mr. Geller) Dr. Corliss, whenever Dr. Krauss would say something about the Teamsters or an AFL-CIO union, did he say whose thought he was expressing, his own or those of someone else?

A He didn't say, but I assume they were his own thoughts.

He did say, I feel --

MR. EDELMAN: I'm going to object to assumptions. What the witness said is the evidence.

JUDGE ROSENBERG: What did the witness say, did he say I feel?

THE WITNESS: Yes.

JUDGE ROSENBERG: Does that satisfy you, Mr. Edelman?

MR. EDELMAN: Whatever the witnness said satisfies me/

Q At any point during any of these discussions, did Dr. Krauss refer to economics or financial considerations for factors of the closing of the dental clinic?

A Well, he didn't -- I'm trying to organize it the way I remember it.

He did mention that they would have to reduce their budget because of the, I think because the number was around 3,000 electricians who had been unemployed at one time.

We were working on electricians who were unemployed and we all were aware of economic difficulties.

It wasn't mentioned that it was going to close because of economic difficulties.

Q When you say it wasn't mentioned --

A I mean in the discussions we had previously. For example, I think Dr. Krauss mentioned to me as far back as the winter things were very bad with the electricians, with our clinic.

But, there was no mention of closing.

Q Do you recall when in the winter he said this?

A I really don't know.

Q Was it before March 15th, if you remember?

A Yes.

JUDGE ROSENBERG: When was the first time, if he ever, before it's closure that anybody in the hierarchy of management ever indicated that either the clinic would be closed or the clinic had been closed because of economic difficulties?

Before April 30th did any member of the hierarchy of the pension fund or any of the respondents tell you that the possibility existed that the clinic would be closed because of economic problems?

THE WITNESS: No.

JUDGE ROSENBERG: When did you first learn that it was going to be closed?

THE WITNESS: The day I came up and we were told the clinic was closed.

JUDGE ROSENBERG: When was that?

April 30th?

THE WITNESS: I don't remember it.

JUDGE ROSENBERG: In other words, this came to you as a complete surprise?

THE WITNESS: Complete shock, the first I heard of it.

source?

THE WITNESS: No, that was the first time -- we speculated it might close in the future, but we were never aware it was going to close that day.

JUDGE ROSENBERG: Didn't you testify that on May 7th you had a conversation with Dr. Krauss that there was some mention made that there would be a cut back in the number of docotors at the clinic?

THE WITNESS: That was only if he could persuade them to open it, not cut back the number of doctors, this was after the clinic had closed, not before.

This gentleman is asking me what happened before. But after the clinic had closed he mentioned that we'd have to reduce the number of hours to reduce the budget if they were to reopen it.

JUDGE ROSENBERG: If they would reopen it?

THE WITNESS: If he could convince them to reopen it.

Q Do you say you and others speculated about closing the dental department even before the initial announcement of closing?

MR. EDELMAN: I'm going to object to that as irrelevant.

JUDGE ROSENBERG: Is this something that is in his affadavit?

MR. GELLER: No.

JUDGE ROSENBERG: Sustained.

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Q Now, when Dr. Krauss mentioned his idea, or the idea of reducing the number of hours after the dental clinic closed, did he indicate whose idea it was, his or someone else's?

A No. Just that he would have to reduce the budget.

Q If he could convince the pension committee to reopen?

A Right.

Q Now, you've been in the dental department for nine years, you say?

A It's about a year after it opened out at Flushing.

Q Based on that experience, do you know what the effect would be upon patients if the number of hours were reduced?

A I think it would be a hardship, we were very busy.

Q Do you know what form that hardship would take?

JUDGE ROSENBERG: I assume less patients would lessen services.

MR. GELLER: There's another alternative.

JUDGE ROSENBERG: Or they would have to go to their own private doctors.

MR. GELLER: Or the appointments would have been placed so far apart --

MR. EDELMAN: For that matter you eleviate your problems and you eleviate prior patients entirely.

JUDGE ROSENBERG: That's not the point he's making. The objection is overruled.

Q Now, did you ever notice that Dr. Krauss was checking dental records more closely during the two months prior to the shutdown than he had been previously?

A No, he was always checking. He lived with a shadow-box, that's what you look at x-rays with, on his desk.

Q Any difference between his conduct after March 15th in this regard and before March the 15th?

A Not that I could see.

MR. GELLER: No further questions.

MR. EDELMAN: I have no redirect, your Honor.

JUDGE ROSENBERG: You may step down.

Call your next witness.

MR. EDELMAN: I will call Dr. Alcalay as my next witness.

Whereupon,

DR. JOSEPH ALCALAY,

was called as a witness and having been first duly sworn testified as follows:

JUDGE ROSENBERG: Be seated and give your full name and address to the Reporter.

THE WITNESS: Joseph Alcalay, DDS, 7025 Yellowstone Boulevard, Forest Hills, New York, 11375.

DIRECT EXAMINATION

Q (By Mr. Edlman) Dr. Alcalay, you are a dentist, is that correct?

A Yes, sir.

Q And you have been practicing dentistry for how long?

A Ten years.

Q And were you ever employed by the Joint Board?

A Yes, sir.

Q And about how long were you employed by the Joint Board?

A Approximately about three years. I don't know exactly.

Q How many hours or days?

A Two days a week, Tuesday and Friday, sixteen hours per week total.

Q And your pay?

A $13 per hour.

Q And in what department of the clinic did you work?

A Crown and bridge.

Q How many departments were there in the clinic?

A Operative, peridontics, periodontics, prosthetics, root canal, oral examination, oral surgery, x-ray department and also some children's dentistry.

Q I direct your attention, Dr. Alcalay, to the period about the week or so before the clinic closed and ask if you recall having a conversation at that time with Dr. Krauss?

A Yes.

Q And can you tell me where the conversation took place?

A Between the operatory and the waiting room on the

actual hall going to the actual operatory, which was assign
to me at that time to treat my patient.

Q Was anybody present with you when this conversation took place between you and Dr. Krauss?

A I don't think so.

Q Can you tell me what he said to you and what you said to him?

A Well, Krauss approached me very briefly and said, Dr. Alcalay, or Joe, I don't remember exactly, are we involved with those people, are you involved with those people.

Q Those are the words he used, those people?

A Right.

Q Did you answer him?

A Yes, I was kidding around and I said I was involved with my wife, and my patients and my kids, my nurse. You know, I was kidding around.

JUDGE ROSENBERG: Did he mention what he meant by involved?

THE WITNESS: Actually, per se?

JUDGE ROSENBERG: Yes.

THE WITNESS: No.

JUDGE ROSENBERG: Up until then did you have any reason to know, to believe, rather, that he knew that you had signed a card that was actively trying to get the

A1CO

Teamsters in?

THE WITNESS: I guess he was trying to find out, I don't know.

JUDGE ROSENBERG: Have you ever said anything to him before that or about your interest in the union?

THE WITNESS: No, I was only two days a week there, actually. I started 11:00 o'clock and finished at 8:00. I wasn't full time. I wasn't thirty hours, 33 hours. I was sixteen hours.

JUDGE ROSENBERG: Had you ever mentioned to him, prior to, say, the last week in April, before the clinic closed, that you had an interest in the union, that you had signed a card?

THE WITNESS: Dr. Krauss was off on Fridays, so actually I only saw Dr. Krauss on Tuesdays, you see. I didn't see Dr. Krauss on Friday because that was Krauss' day off.

Q When Dr. Krauss asked you if you were involved with those people, did you know who he was referring to?

A Well, I had an idea, you know, we already had signed with Local 277. Nobody ever asked me before if I was involved with anything.

MR. EDELMAN: I have no further questions of this witness.

MR. GELLER: May I see the affadavit?

JUDGE ROSENBERG: Take a couple of minutes.

Off the record.

(Whereupon, a short recess was taken.)

JUDGE ROSENBERG: On the record.

CROSS EXAMINATION

Q (By Mr. Geller) After you replied to Dr. Krauss, yes, I'm involved with my wife, my kids, my patients, what happened then?

A I had a patient assigned to me at operatory, room 5, the patient was waiting and I went to treat my patient. That was it.

MR. GELLER: No further questions.

MR. EDELMAN: I have no further questions.

JUDGE ROSENBERG: You may step down.

MR. EDELMAN: I call Dr. Gus Goldberg.

Whereupon,

DR. GUS GOLDBERG,

was called as a witness and having been first duly sworn, testified as follows:

JUDGE ROSENBERG: Give your full name and address.

THE WITNESS: Gus Goldberg, D.D.S., 123-4030 3rd Avenue, Kew Gardens, 11415.

DIRECT EXAMINATION

Q (By Mr. Edelamn) Dr. Goldberg, are you a dentist?

A That's correct.

Q And you have been practicing dentistry about how long?

A Thirty-five years.

Q Have you ever been employed by the Joint Board Dental Clinic?

A Yes, I have.

Q How long have you been employed by the Joint Board?

A About four years.

Q During your employment, how many days did you work at the clinic?

A Four dys a week.

Q What days?

A Monday, Tuesday, Wednesday and Thursday.

Q Rate of pay?

A $13.50 an hour.

Q Can you tell me who was in charge of the dental clinic?

A Dr. Krauss.

Q And there were clerical employees employed at this dental clinic?

A Yes, there was.

Q Overall charge of these employees was with whom?

A Dr. Krauss.

Q And with respect to hiring dentists or hiring the clerical employees, who was responsible, if you know, for hiring?

A Dr/ Krauss.

Q And discharge?

A That's correct.

Q Now, do you know an individual by the name of Joseph D'Angelo?

A Yes.

Q And who is Mr. D'Angelo, to the best of your knowledge?

A To the best of my knowledge he superceded Dr. Krauss and I believe he was in charge of the medical and dental departments, that's my understanding.

Q Where is his office?

A I believe either on the third or fourth floor.

Q The dental clinic was on what floor?

A Second.

Q And there was a medical clinic as well?

A Yes.

Q That was on what floor?

A Same floor.

Q Second floor?

A Second floor directly opposite to ours.

Q Both were run by the Joint Board?

A That's correct.

Q Now, what was on the -- anything else on the second floor?

A There was some -- yes, there was an insurance or disability, or something to that effect, on that floor. Had to do with disability insurance for the union members of Local 3.

Q Some kind of disability for Local 3 members?

A Yes.

Q What was on the third and fourth floors of the building?

A I believe these were the executive offices.

Q Of who?

A Of the officers of Local 3.

Q Local 3 had its office in the clinic building?

A Primarily on four. I think on three too, I'm not sure.

Q Joseph D'Angelo had his office on four?

A I believe so.

Q Now, in connection with the clinic itself, what kind of work did the clericals perform?

A Primarily their work was to, was divided into a couple of different segments. Primarily the work was to make appointments for patients for the filling department, we call it the operative department, and to fill out their folders after we had marked what we call buck slips on the patients charts.

Q They did the clerical work then in connection with the professional work?

A That's correct.

Q Who did you service, who did the clinic service?

A All members affiliated with Local 3 and their families.

Q Now, do you know Dr. Burnetto?

A Yes.

Q Did he have a title at the clinic?

A As far as I know, the title that he went by was the assistant to Dr. Krauss.

Q Now, in connection with the operation of the clinic, suppose a patient came in with a dental problem, who would he see first?

A Dr. Burnetto.

Q Now, what was Dr. Burnetto's function in connection with that patient?

A Well, he would examine the patient and make a diagnosis and, depending on what the situation was, if it was a question of an emergency, he would assign the patient to the proper dentist.

If it were a question of a diagnosis for a bridge, he would usually -- sometimesDr. Krauss, it was primarily who did diagnosis for crown and bridge, prosthetics.

Q Prosthetics is what?

A That has to do with full dentures, partial dentures.

Q What is crown and bridge?

A Has to do with fixed bridge work and individual crown, jackets and the like.

Q Suppose a dentist, a patient came in with a sore tooth?

A Yes.

Q Who would decide whether the tooth could be saved or would be abstracted?

A Dr. Burnetto would do it and if he had any question in his mind, he would go in conference with Dr. Krauss.

Q The decision itself at least would be by Dr. Burnetto, primarily, or and/or Dr. Krauss?

A Correct.

Q Not by the dentist who is going to pull the tooth?

A No, the final decision rests entirely with them.

Q Did they make most of the decisions on what work would be performed on the patient?

A Well, you have to divide it up. In the filling department, after the x-rays would be taken and after the patient was examined clinically the dentist would make a diagnosis and write up whatever filling required to be done. Outside of that, all other decisions would be made entirely by Dr. Burnetto and by Dr. Krauss and sometimes by Dr. Coleman, assistant to the assistant, so to speak.

Q Who was the primary decision made by, in connection with the diagnosis of these patients?

A If you're referring to crown and bridge and prosthetics, all partial denture work, it was Dr. Burnetto.

Q Would it be fair to say that Dr. Burnetto made the decisions in connection with all patients other than fillin

A Repeat that question, please.

Q Would it be fair to say that Dr. Burnetto made the diagnosis and the recommendation as to what the treatment would be in connection with all patients, other than fillings?

A I would say yes.

Q Who made the selection of the dentist who would handle the particular operation?

A It would be Dr. Burnetto.

Q And were there often times one or more dentists that could have performed the function that was to be performed?

A I would say so, yes.

Q And the selection to perform the operation would be made by whom?

A By Dr. Burnetto.

Q And the situation, for example, where a patient came in with nerve problem, let's say, in one tooth, and I speak truthfully like a layman, because my knowledge of dentistry is nil, I take it that there might be situations in dentistry wherein the treatment of the tooth involved a nerve and it would be a question as to whether to fill the tooth and remove the cavity or to pull the nerve.

A Or extract the tooth.

Q So, you had a choice of three things?

A That's correct.

Q Who had the responsibility for making this decision?

A Well, it came to root canal work, we call it, orthdontia, usually Dr. Burnetto would see the patient and I think Dr. Krauss was the one who made the final decision, or at least usually whether the tooth should be extracted or whether root canal work should be done.

Q In that end of it?

A Right.

Q In other respects, Dr. Burnetto made the decision?

A Right.

Q Did Dr. Burnetto make decisions from time to time on extractions?

A Yes.

Q Who assigned the dentist that made the extractions?

A Usually Dr. Burnetto.

Q Did Dr. Burnetto perform dental work like the other dentists?

Did he fill teeth, extract teeth, perform root canal work?

A No, he did not.

Q Now, when you had a patient in your office was there any way that you knew how much time you were to spend with this patient?

A Yes, I did.

Q And how was this decided?

A Well, usually again, I go back, usually it was Dr. Burnetto and sometimes Dr. Krauss, and sometimes Dr. Coburr would assign, depending on the length of the case, difficulty of the case, what was involved.

Either a half an hour or an hour or two hours per session for them to take care of the patient.

Q In other words, when an assignment was made to a patient he was given the time he was to spend with the patient as well?

A This was true in crown and bridge and I guess all the departments, primarily prosthetics, crown and bridge.

Q What department did you work in?

A Crown and bridge.

Q Now, the clinic was located at 157 Jewel Avenue?

A Right.

Q Which housed the medical and dental clinic as well?

A Right.

Q On the first floor, what was located?

A Well, the first floor was the entrance to the building. You went up to the next floor, so-called the second floor and that was where the dental and medical clinics were locat4d.

A Exactly.

JUDGE ROSENBERG: Off the record.

(Discussion off the record.)

JUDGE ROSENBERG: Back on the record.

Q Now, at any given time, how far in advance were patients scheduled for work?

A Different departments it varied. But, best of my knowledge, once a week to two weeks to four to six to eight to ten weeks even in advance.

Q What department might really be booked up in advance?

A I think primarily prosthetics and crown and bridge were the most advanced in their appointments.

Q What department may a patient spend the shortest waiting period?

A I think operative dentistry, filling department.

MR. GELLER: I'd like to object. I could wait till cross examination, but I see absolutely no foundation how Dr. Goldberg would find these things. I don't think he's qualified.

JUDGE ROSENBERG: Is this on the basis of your own observation?

THE WITNESS: My experience there. Four years I was there. I saw the way things were done.

JUDGE ROSENBERG: Well, Mr. Geller, certainly these men weren't put in little cages in each one of these rooms.

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MR. GELLER: Your Honor, observing things is one thing and doing things is another.

Unless you see John Doe come in one week and then see John Doe return the next week --

JUDGE ROSENBERG: Maybe he saw the appointment books.

MR. GELLER: I'd like to find that out.

JUDGE ROSENBERG: He's testified as to what he claims is his experience. If you find that this is not so, there are people, you've got Dr. Krauss and you've got others that can rebut it, don't you?

MR. GELLER: We'll make good use of them. If I may, just one more comment, he -- his experience there is limited to crown and bridge, as I understand it. He's talking about operative dentistry now.

JUDGE ROSENBERG: But, he might be an observant. The objection is overruled.

Q Dr. Goldberg, did you ever contact Local 277 prior to March 5th?

A I did.

Q How did you make this contact?

A I called Local 277 and spoke to somebody there.

Q You don't know who?

A I do know who.

Q Can you tell me who?

A Mr. DiStinti.

Q Can you tell me what conversation took place?

A Yes, I asked him if he would be interested, working for Local 3, as dentists, if he would be interested in organizing our group, we were interested in joining the Teamsters union and he said he'd be more than happy to.

Q When you made this phone call, was this in February?

A Yes.

Q Did you leave your name?

A No, I did not.

Q Did he ask for your name?

A He did not.

JUDGE ROSENBERG: What prompted you to call Local 277?

THE WITNESS: This may sound funny, but I was looking for a union which had national relations board for the agent. Because, I knew anything that was connected with the State, to be frank, we wouldn't have a leg to stand on because of our power with the State Relations Board and I opened up the phone book and the first thing I thought about were the Teamsters and in the white pages I found Teamster Union Local 277. I didn't know beans about it and that's how I got the number and called it.

Q Do you know if any other dentist or any other person contacted Local 277 in this period of time in February?

A Yes, I do.

Q Who?

A Dr. Vierno.

Q And do you know whether Dr. Vierno spoke to anybody in Local 277?

A Yes, because when I spoke to Mr. DiStinti I got his name and I gave all the information that Mr. Di Stinti had given me, written on a piece of paper, the next day I gave it to Dr. Vierno and Dr. Vierno then contacted Mr. DiStinti.

Q Were you present when Dr. Vierno contacted Local 277?

A I was not.

Q Did Dr. Vierno indicate to you that he had made contact with Mr. DiStinti?

A Yes.

Q Did he indicate to you whether he would leave his name?

A He told me he would not leave his name. The primary purpose was we didn't leave our names because if they found out we'd be out of a job.

MR. GELLER: Objection.

THE WITNESS: This was our feeling at the time.

JUDGE ROSENBERG: That's sustained.

Q With respect to further meetings between any doctors and DiStinti, do you recall a meeting that took place on or about March 5th, 1976?

A Yes, I do.

Q Who was present at that meeting?

A Dr. Vierno, myself, Dr. Warren and Dr. Kramer.

Q Was Dr. Burnetto present?

A No.

Q Obviously before going to the meeting I assume the dentists had spoken among themselves in connection with the union representation?

A That's correct.

Q In your conversation with these dentists, had you formed an opinion as to Dr. Burnetto's value in an organization campaign?

A We weren't sure whether he was management or not and on that basis we felt we ought to leave him in abeyance for the moment because -- until we clarified the situation as to whether he was management or not.

Q I take it then he was not involved in discussions among dentists prior to March 5th?

A Correct.

Q He was not present at the meeting on March 5th?

A He was not.

Q The meeting on March 5th took place where?

A Union headquarters. I don't know the exact -- Union Square West.

Q Do you recall what time of day it took place?

A In the morning; 7:30, 8:00 o'clock in the morning.

Q Can you recall briefly what the conversations were that took place at this meeting?

A Yes, we indicated to him that we had a majority of the men who seemed to be interested in joining the union and that we, whatever he gave us -- general discussion -- we knew nothing about unionism, just what was involved, we came back and discussed it with the men in very general terms.

Q This is the following meeting?

A Yes.

Q Following your discussions with the men, was there a subsequent meeting that was scheduled among the union and the dentists?

A Yes, there was.

Q That was on what date?

A That was on March -- I think it was Sunday, March 14th.

Q You were present at that meeting?

A I was.

Q Can you tell me who else was present?

A I know there were sixteen men present at that time.

Q Sixteen dentists?

A Yes.

Q Was Dr. Burnetto among them?

A No.

Q Do you recall who was present at this meeting?

A I could name them.

Q Could you name all sixteen?

A I don't know. I can name as many as I can recall.

Dr. Vierno, myself, Dr. Alcalay, Dr. Nesse, Dr. Nash, Dr. Kramer, Dr. Nachbar, Dr. Harry Miller, Dr. Greenwood, Dr. Katz.

My memory's not as good as it used to be.

Q Sidney Miller?

A Yes.

Q Alcalay?

A Yes.

Q You were present, of course?

A Yes.

Q Dr. Manford, was he present?

A Yes, he was.

Q Greenwood?

A Yes.

Q Dr. Warren?

A Yes.

Q Vierno?

A Yes.

Q Nesse?

A Yes.

Q Dr. Nachbar?

A I don't recall -- yes, he was.

Q Dr. Garfield?

A Yes.

Q Dr. Falkin?

A Yes.

Q Dr. Katz I believe you mentioned?

A Yes.

Q Dr. Kramer I believe you mentioned?

A Yes.

Q Dr. Seymour Levine?

A Yes.

Q And Dr. Lawrence Miller?

A That's correct.

Q Now, you know these individuals?

A I do.

Q You worked with them?

A Yes.

Q In connection with the meeting that took plce on March 14th, you have signed a card?

A I did.

Q You've been shown your card and identified it?

A Correct.

Q Did you observe any other dentists signing cards?

A Oh, yes.

Q How big a room was this that you were in?

A Well, I would say somewhere about the size from where that (indicating) door runs and, of course, the rest.

Q Smaller than this hearing room?

A Yes, it was smaller than this hearing room.

Q Like a conference room?

A Yes, it was a conference room.

Q A table in the middle?

A Yes.

Q Where were the dentists seated?

A Around the table.

Q So that you could, by looking around, see all of them?

A Correct.

Q Did you observe all the dentists signing these cards?

A Well, whenever I looked up -- I think I was one of the first to sign and everyone was signing their cards. I can't say I saw everyone signing it, but, however, I saw writing, was writing. Couldn't say I saw all sixteen at one time.

Q Do you recall who you saw sign?

A No, I could not.

One, Dr. Alcalay asked me how to fill out something.

Q After the cards were signed, what did you do with your card?

A I made out a check for initiation fees and dues and presented them to Mr. Festa.

Q What did the other employees do with their union cards?

A They all made out checks, after they filled out the cards, and presented the card and the check to Mr. Festa.

Q I direct your attention to the day following this meeting, that would be 3/15, March 15th.

A Correct.

Q Were you working in the clinic on that day?

A I was.

Q And do you recall having any conversations with Dr. Krauss on that day?

A Yes, I do.

Q Can you tell me where the conversation took place?

A Yes. My room was situated -- I think it's Room 3 -- situated next to Dr. Krauss' office and the meeting that you're speaking of took place just outside my door, which is very close to Dr. Krauss.

Q In the corridor?

A Corridor.

Q Outside your door?

A Correct.

Q Where are Dr. Krauss' offices?

A Just a few feet from myself.

Q Was anybody present?

A No.

Q Can you tell me what took place at this time?

A Yes. As I came out of the room, that was on a Monday --

Q About what time of day was this?

A I don't know. I think it was 1:00, 2:00 o'clock, somewhere in the afternoon. As I came out of the room he was holding something in his hand, which looked like a telegr and he was looking at it as I came out of the room and he looked up at me and looked down at the paper and he said, "Do you know who are involved in this union bit?"

And I said to him I heard some vague rumors to the effect that somebody on the outside had contacted the Teamsters.

Q That was not the truth, however?

A That was not the truth.

Q Why didn't you tell Dr. Krauss the truth?

MR. GELLER: Objection.

JUDGE ROSENBERG: Overruled.

A Very obviously, I was afraid of my job. I would have been fired immediately.

Q I direct your attention to the period around --

JUDGE ROSENBERG: How do you know you would have been fired immediately?

THE WITNESS: You'd have to be working with Dr. Krauss and his temper and his psyche.

JUDGE ROSENBERG: Did you have any reason to believe that he was anti-Teamsters or anti-union of the dentists?

THE WITNESS: Did I have reason to believe?

Well, nothing that he said to me, directly, prior to the formation of the union that would indicate that he was an anti-union person.

JUDGE ROSENBERG: Did the subject ever come up prior to this incident?

THE WITNESS: As related to unions?

JUDGE ROSENBERG: Yes.

THE WITNESS: I don't recall.

JUDGE ROSENBERG: Were you involved in that organization of the union that one of the early witnesses testified to?

THE WITNESS: No, sir. I was not there at that time.

JUDGE ROSENBERG: Did you feel that just because of some personal quirk that Dr. Krauss would be opposed to the union and would take it out on you if he learned that you were the main factor?

THE WITNESS: I think it was a question of power struggle. I think he felt if we formed a union, I think he thought it would take away some of his power.

JUDGE ROSENBERG: So far as you know, he never expressed himself in any way, one way or the other about a union or Local 277 representing the people?

THE WITNESS: Well, by hearsay --

JUDGE ROSENBERG: I don't want hearsay. As far as you know.

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THE WITNESS: As far as I know, directly from Mr. Corliss I never had occasion to discuss it with him, so I couldn't say.

JUDGE ROSENBERG: It was the way he made those statements about the union and you gave a false reply?

A That's right.

Q I direct your attention sometime around mid April of 1976 and ask if you can recall a meeting taking place with some dentists and Dr. Corliss?

A Yes, somewhere about the middle of April there was a call on the intercom for all the dentists to come into the lounge.

Q All dentists?

A Whoever were working there that day.

We all went into the lounge and Dr. Corliss came in and made a statement -- I don't recall whether that was the first, once he came with Mr. D'Angelo and one time he came on his own, if I recall.

Q Tell me about the timehe came his own?

A All the men were in there and he said if anybody made a hole in the crown or did anything else in dentistry which he felt was wrong it was his considered opinion, his considered opinion, he would be the final judge as to whether this was a malicious act against him and/or sabbortage.

JUDGE ROSENBERG: Had he ever held these meetings and assert this before?

A No.

Q Did he use the word malicious and/or sabotage?

A And/or sabotage.

Q Those were his words?

A Those were his words.

Q Those were his words?

A Those were his words.

Q Are you aware of any malicious act committed by any dentist towards any dentists?

A Absolutely not.

Q And did you commite any malicious act or sabotage any patients work?

A Absolutely not.

Q Whether any prior meetings wherein either Dr. Corliss or Mr. D'Angelo or any other Local 3 officials had assembled the dentists and warned them against sabotaging?

A Never.

Q Had Dr. Corliss prior to March 14th ever expressed to you his opinion as to the quality of the dentists that he had employed at the clinic?

A Yes, one timeDr. Corliss and I -- sometimes Dr. Krauss -- incidentally, Dr. Krauss and I had a good relationship, I can't complain about our relationship, but he called Dr. Corliss and myself into his office I don't know how -- we just talked generalities, and then this thing came up.

I can't give it to you exactly, but Dr. Corliss -- Dr. Krauss mentioned to I think Dr. Corliss, you know, this is the best group of men I've had working since I've been here and Dr. Krauss said, how did you ever guys to work for the kind of money we are getting.

These were the words that we used.

Q When did this conversation take place?

A When did this take place?

Q Was in 1975?

A I think the early part of 1976, as I recall.

Q Now, I draw your attention to a period of time approximately a week before the clinic closed and ask if you rrecall a conversation with Dr. Krauss concerning Dr . Manford?

A Yes.

Q Can you tell me whether -- where the conversation took place?

A Yes, in his office, Dr. Krauss' office.

Q Who was present at this conversation?

A Dr. Corliss, Dr. Krauss and myself.

Q Can you describe for me exactly how the conversation took place, what led up to it?

A Yes.

We got a call on the intercom, I got a call to go to Dr. Krauss' office and then Dr. Corliss got a call to go to Dr. Krauss' office.

Dr. Krauss told us that Dr. Manford was making a crown for a patient which required, I'm -- I'll try to get this in non technical terms, which required the sending to the laboratory of a lower removable bridge so that the crown would fit inside the removable bridge.

It was necessary for this lower or upper, whatever it was, case to go alongwith this impression taken for a crown.

This was part of the job.

Dr. Krauss called us in, when we were sitting there and said that Dr. Manford had not sent this partial case to the laboratory and he felt this was a malicious act against him.

I protested to him that Dr. Manford wouldnever do a thing like this and this was a lapse of memory because Dr. Manford had had stroke some months before.

Dr. Corliss also agreed with my statement and he mentioned -- he manifested himself by saying words to the same effect.

And then Dr. Manford was called in and he mentioned the same thing and he said he was going to fire Manford.

Q Did he say why he was going to fire him?

A Because he felt it was a malicious act against him personally.

Dr. Manford was called in, he said the same thing, didn't say about firing him, mentioned the part about the partial casing for the crown, and he protested that he had sent it in.

Finally Dr. Manford just walked out of the room, just can't talk to you, just can't talk.

Walked out.

With that, the phone rang and Dr. Krauss answered it and spoke a while, hung up and he said, "I'm sorry the laboratory has the case there.

Do you want me to continue?

MR. EDELMAN: Yes.

THE WITNESS: Okay.

A After this incident was closed he mentioned --

Q This was at the same conversation?

A He turned to Dr. Corliss he says, how the hell you didn't tell me that these guys were forming a union?

He says because I have to live with these men.

Q Who said, I have tolive with these men?

A Dr. Corliss answered, because I have to livewith t hese men.

That was the end of that particular conversation.

Q The -- before we go, do you recall anything further that took place in connection with this conversation?

A Let' see now.

Yes, there was another point there.

I know there were three points.

Q Do you recall during the conversation the words, "upstairs" being mentioned?

A Oh, yes.

Then he said to both of us, he says, you know, I've been stripped of my powers upstairs because they said to me, how come someone as astute as you with 30 men let a union be formed under your very nose.

Q And these were Dr. Krauss' words?

A These were Dr. Krauss' words.

Q Who did he indicate had stripped him of his powers?

A He said somebody upstairs.

Q Did he indicate anybody?

A No individuals.

Q He mentioned that there were two meetings of the dentists with Dr. Krauss.

One with Dr. Krauss alone and one with Dr. D'Angelo.

A He came down with Joe D'Angelo, Mr. D'Angelo read a prepared statement.

Q Before we get to that, who was present at this meeting?

A All the dentists who were working.

Q On this particular day?

A Yes.

Q And did -- and this meeting took place several days you say, as to the first meeting with Dr. Krauss?

A Either thenext day, same day or couple of days, I can't recall.

Q And where did the meeting take place?

A In the lounge.

Q About how many dentists were present on that day?

A I'd have to guess.

15.

Q Mr. D'Angelo was the speaker?

A Yes, he was.

Q And he addressed all the dentists?

A Yes.

Q Can you tell me what he said to the dentists?

A In essence, it was exactly what Dr.Krauss had told us, whatever it was, day or two before, making malicious acts.

Q What did D'Angelo say?

A He said he wouldconsider anything that Dr. Krauss felt was a malicious or sabtoge act against him, . Dr. Krauss would be the sole judge whether this was a malicious act or whether it was or not.

Q Prior to theclosing of the clinic did you receive any notice from management that the clinic was going to close?

A None whatsoever.

Q So, on April 29th, you had no knowledge?

A I didn't work on Friday, I just cameby to pick up my check.

All I know I was handed a check andthis letter that was folded up and hooked on to the check, and that was the first I knew about it.

Q That was on April 30th?

A Yes.

Q Friday?

A Correct.

Q Pay day?

A Yes.

Q Did you read the letterthat was hooked to the check?

A Yes, I did.

Q Do you recall what the letter said?

A In essence, that the close of business of April 29th, or something, that the Board, Pension Board, Welfare Board or something had decided to withdraw the pension benefit from their union members and close the clinic.

Words to that effect.

Q Did you have any personal belongings in the clinic at this time?

A I did.

Q Did you make any arrangement to pick them up?

A Dr. Krauss mentioned to me, if they have any personal belongings to take them out.

I had a little stool that I had forgotten and came back for and Dr. Krauss opened thedoor for me and I took t he stool out and that was it.

Q In 1976, were any new dentists admitted to the staff?

A Yes, there were.

Q Who were they?

A Dr. Wohlman, I believe Dr. Class and Dr. Eiges.

Q And do you know whether or not the clinic was seeking new dental help?

A Yes, they were.

Q How do you know this?

JUDGE ROSENBERG: This is meaningless, unless it explains this question.

Were there vacancies that these people were brought into or placed or filled, rather?

THE WITNESS: No.

May I explain t his?

When I came into the clinic, originally, Dr. Krauss mentioned that we were seeing something like 50,000 appointments per annum and now we were seeing someth ing like 70 or 75, I don't recall the exact figures and they needed more help.

As a matter of fact, there was talk about extending the clinic and making it larger.

JUDGE ROSENBERG: Even if they did hire some, Mr. Edelman, this could be a duel point on your part.

That may have been oneof the reasons why because they had to expand in view of the fact that there were 3,000 or whatever out of work and whose employers are now contributing and with the expanding, the number of patients, the consequent examination would be addition of the number of dentists may well have been one of the reasons which contributed the economic pressures.

MR. EDELMAN: If they weren't expanding or if they weren't filling replacements you could make the argument you can see they were in such financial shape they weren't able to handle the overincreasing work.

JUDGE ROSENBERG: I'm not saying that it's the truth, that's what I have to determine.

Do you have any more of this witness?

MR. GELLER: I don't think question was answered, whether they were brought in to fill vacancies.

JUDGE ROSENBERG: Well, were they?

Yes, or no?

THE WITNESS: Someof them, maybe one.

But, in answer to your question, Your Honor, everytime there was an ad put in the papers and they weren't getting any responses to the ad, they were anting up the amount that they were paying per hour.

First they put in 12 dollars, when they got no reply the next week another ad was put in and put it up to 12 and a half dollars.

Q If it wasn't in trouble financially, why would they anti up the starting salaries?

A They were doing it constantly.

Q Did you, from time to time, prior to the union organization, did you ever -- do you know Harry Van Arsdale?

A I have met him, yes.

Q I'm talking about Van Ardsale, Jr.

A I had met senior, yes.

MR. GELLER: I don't think you have the right people here.

Q Did you know Harry Van Arsdale, Jr.?

A Yes, I knew him by sight, to greet each other.

Q Did he have his office on thethird or fourth floor ofthhe building?

A He did, yes.

Q Did you see himprior to the union coming or the union organization?

A Yes, I did.

Q How would you describe his attitude to the prior?

A Well, very frequently when he saw me he knew me by sight, I worked with someof the vice presidents there and he greeted me by normally and waved to me.

Q Did you notice any change in his attitude towards you following the union demand for recognition?

A I did.

Q Can you describe the change?

MR. GELLER: I'll object to that.

JUDGE ROSENBERG: Sustained.

MR. EDLEMAN: Your Honor, I think the witness is capable of making --

JUDGE ROSENBERG: "There maybe a million reasons, why there might have been a change.

He might have stumped his toe against it.

MR. EDLEMAN: That's possible, Your Honor, if the change was noticed in the timeof the time I submit was significant.

There maybe a -- many reasons why there maybe a change in their attitude..

Q Were you aware of any anomosity between the Teamsters and Local 3?

A Yes.

MR. GELLER: Objection, he would have no way of knowing.

THE WITNESS: Yes, I do.

JUDGE ROSENBERG: Please don't say anything.

THE WITNESS: I'm sorry.

PROCEEDINGS

JUDGE ROSENBERG: On the record.

Mr. Edelman, do you want to call another witness?

MR. EDELMAN: I do, your Honor.

I call Dr. Gerald Nesse.

JUDGE ROSENBERG: Raise your right hand.

Whereupon,

GERALD NESSE

having been first duly sworn by Judge Rosenberg, was examined and testified as follows:

JUDGE ROSENBERG: Be seated and give your full name and address to the reporter.

THE WITNESS: Dr. Gerald J. Nesse, N-e-s-s-e, 304 East 18th Street, New York 10003.

DIRECT EXAMINATION

Q (By Mr. Edelman) Dr. Nesse, are you a dentist?

A I am.

Q And how long have you practiced dentistry?

A Thirty-two years.

Q Were you ever employed by the Joint Board?

A I was.

Q How long have you been or were you employed by the Joint Board?

A Three years, approximately.

Q And while you were employed by the Joint Board, what were your working hours?

A Forty hours a week.

Q That would be five days a week?

A Actually six. Monday through Thursday, 11:00 to 8:00 and half a day on Friday and Saturday.

Q Your rate of pay while employed?

A $12.50 an hour.

Q And the department in which you worked?

A Operative dentistry or filling.

Q Who was in overall charge of the clinic?

A Dr. Krauss.

Q Under Dr. Krauss, who was in charge?

A Dr. Brunetto.

Q Did Dr. Brunetto have any specific title that you are aware of?

A The Assistant Director, as for as I know.

Q What was Dr. Brunetto's function?

A Dr. Brunetto was the functioning supervising day-to-day activities of the clinic.

MR. GELLER: Objection to the use of the word "supervisor."

JUDGE ROSENBERG: It does not mean anything statutorally as of now anyway. It is his characterization.

Overruled.

Q Now, can you describe for us the type of work

A First of all he saw all emergencies. And then he was in charge of allocating the work to the prosthetics, which is Denture and Bridge Department.

Q He would interview the patient initially?

A He did all the diagnosis of the patients for that department.

Q Who made the assignments as to which dentists would handle the particular job to be done?

A As far as I know he was in charge of the records for those departments.

Q Now, in connection with day-to-day problems that dentists might have with clinic functions, who would you speak to first?

A Dr. Brunetto was the main spokesman.

Q What type of problems might arise that you might have to speak to Dr. Brunetto about?

A A question,for example, if a tooth should be saved or extracted or root canal, any question as to the ultimate treatment, diagnosis, consult with Dr. Brunetto.

Q If you wanted to leave early for a particular personal reason or something like that, who might you speak to?

A That went to Dr. Krauss.

Q Are there any other problems or any other occurrence that came up in the day-to-day operation of the clinic where you would go to Dr. Brunetto?

A I guess any problem, patient complained, unhappy, any problems as problems do arise with patients, go to Dr. Brunetto. Of course he is -- he was immediately in charge of any problems or anything that came up in the clinic.

He was more or less responsible -- the next step, if anything came up from any patient at all or any--

Q Well, if you can, can you indicate to me the problems that you might be familiar with that came up where you or other dentists went to Dr. Brunetto. You have given one about saving a tooth.

A Let us say a patient comes from a long distance and he wished a longer appointment, he would mention it to you and you go to Dr. Brunetto and tell him you had adequate work to do, would he please okay it for an hour appointment for the next visit.

Q And he would do that?

A That was his job, he would do, if he deemed it proper.

Q Any other functions of this nature that Dr. Brunetto was in charge of?

A Any patient complained or they felt something was not satisfactory, you go to Dr. Brunetto and advise him of the problem and he would handle it to the best of his ability.

Q Did you know how he handled it generally?

A Would you--

Q How he might go about handling the problem of where a patient complained?

A He would speak to them, perhaps bigger problems he'd go to Dr. Krauss. He would try to adjust all matters to keep the clinic functioning, you know, in a pleasing and peaceful manner.

Q Were there ever disputes among dentists to dentists?

A Surprisingly not.

Q Would you know whether Dr. Brunetto kept any records?

A Not personally. I mean the records were all, I guess, basically in Dr. Krauss' hands.

Q Did Dr. Brunetto have any function in connection with instructions, operating instructions from Dr. Krauss?

A Well, I presume that Dr. Krauss is the head of the clinic, and he really never spoke to the men, generally, directly. If he had anything to say usually he told Dr. Brunetto and Dr. Brunetto would relay it to the men.

Q Now, what type--

A Like if something was going wrong, let's say a piece of work did not go well, it came to Dr. Krauss' attention, generally he would tell Dr. Brunetto and Dr. Brunetto would tell the doctor.

Q And when Dr. Brunetto informed the doctor, did he indicate that the message was emanating from Dr. Krauss?

A Yes.

Q Did this happen routinely between Dr. Krauss, Dr. Brunetto and a dentist involved concerning messages?

A Generally, yes.

Q Would you say that it was a routine occurrence?

A Yes. That's the way -- because -- you realize it is a large clinic, many problems would arise, some justified, some not. But anything a patient complains or filling fell out or something, the--unless--it generally was relayed, I presume, because Dr. Krauss kept the records, from Dr. Krauss to Dr. Brunetto to the functioning dentist.

Q Had Dr. Brunetto ever relayed a message to you from Dr. Krauss?

A To myself, personally, you mean?

Q Yes.

A No. Not really. I got along relatively well, so--to the best of my knowledge, no.

Q On your floor of the clinic, were there any other operations going on? You were on the second floor, I take it; is that right?

A Yes.

Q Second floor of the clinic building?

A Yes.

Q Was there any other operation other than the dental clinic?

A Medical clinic and some sort of insurance office of some sort.

JUDGE ROSENBERG: Let me ask you this: On April 30th, when the dental clinic closed down, did the medical clinic on the third floor--I think it was--

THE WITNESS: It is on our floor.

JUDGE ROSENBERG: -- second floor; did that continue in operation?

THE WITNESS: Yes. I believe so.

JUDGE ROSENBERG: There was some testimony here today that there was also an optical clinic.

THE WITNESS: I have no--I really have no knowledge of that.

JUDGE ROSENBERG: The medical one did continue?

THE WITNESS: Yes, and I gather subsequently it has. I had nothing to do with them, but I know--

JUDGE ROSENBERG: Was there any effort while you were employed there by any uninn to organize the medical clinic?

THE WITNESS: We had nothing to do with the medical clinic at all. I never even was in there myself, personally.

JUDGE ROSENBERG: All right.

Q (By Mr. Edelman) How were patients at the dental clinic scheduled to appear; do you know?

A They are scheduled -- the secretaries made appointments. My section half hour per patient, generally.

Q It was clerical secretaries that made appointments in their books?

A Correct. Right.

Q And these--about how much such clerical secretaries were employed, do you know, by the dental clinic?

A Twenty, roughly.

Q And how far in advance in your department were appointments usually made?

A I guess according to availability. Generall it was on a three-week cycle because we saw the patient three weeks later, generally.

Q About how many patients would you handle during the course of a day?

A Oh, sixteen, roughly.

Q Was there generally a time limit that was set for a patient's treatment?

A Half hour.

Q Who set the time limit?

A That was operating procedure of the clinic.

Q Who set that procedure?

A I presume Dr. Krauss, that's the way the clinic worked.

Q Do you recall attending a meeting at a Sheraton Hotel on March 14th?

A Yes.

Q At that meeting you signed an authorization card?

A Correct, yes.

Q And how large was the room that you were in at that meeting?

A Roughly, the size of this room. A little smaller, maybe.

Q Conference room size?

A Yes.

Q And there was what, one table in this--a large conference table?

A Yes. Sheraton table.

Q With the dentists seated around this table?

A Yes.

Q Did you observe the dentists signing the authorization card?

A Generally, yes.

Q Do you know Lawrence--Dr. Lawrence Miller?

A Yes.

Q Was he present at that meeting?

A Yes.

Q Did you observe him sign an authorization card?

A I wouldn't recall specifically.

Q Do you know if he was given a card?

A I presume since he was at the meeting. I mean, I did not--

don't or some do and the rest don't, then the ones that have not showed up, then move for the admission.

MR. EDELMAN: All right. I will do that.

JUDGE ROSENBERG: Rather than me ruling on admissibility of their cards now based upon this witness' testimony and the testimony of the president.

You may have the signatory himself show up.

MR. EDELMAN: All right. I will withdraw that for the time being.

Q (By Mr. Edelman) By the way, was Mr. Brunetto at the meeting on the 14th?

A No, he was not.

Q Dr. Nesse, I direct your attentinn to a date on or about March 31st, and ask if you can recall having a meeting with Dr. Krauss.

A Yes.

Q Can you tell me where themeeting took place?

A In the Doctors' Lounge.

Q Can you tell me who was present at this meeting?

A Dr. Krauss.

Q Anyone else?

A There was another gentleman there. I think his name is Mr. Shea. He was sort of in the background.

Q And any dentists present?

A All the dentists who were working that day.

JUDGE ROSENBERG: All of them you say were

THE WITNESS: Who were working. There was a call over the loudspeaker.

Q About how many dentists were at that meeting?

A Approximately twenty, I would guess.

Q Do you recall what took place during this meeting?

A Dr. Krauss came in and delivered a statement to the effect that a rumor had been started that the dental clinic was closing.

He did not say whether it was true or false, but he said that the only one who could close the clinic would be the Joint Board, and they certainly have not made any such decisions, and anybody who spread any such rumors would be dealt with summarily.

JUDGE ROSENBERG: That is alleged in Paragraph 17 of your complaint. I wonder how does that constitute--I assume that is supposed to be a violation of Section 8(a)(1)8.

MR. EDELMAN: Yes.

JUDGE ROBENBERG: The head of the dental clinic calls the people together, the doctors together, and he says that he has heard that rumors have been drifting through the clinic that the clinic is going to be closed. And the doctors--Dr. Krauss then says, I'm not sure that's correct at all. And anyb ody who does that or spreads a rumor that is false may well get fired.

MR. EDELMAN: We should take the position in the context of what took place, your Honor, the statement cannot be looked at in a vacuum. In the context of various meetings with Dr. Krauss and Mr. D'Angelo and the statements that were made to the various dentists, that does not constitute an implied threat to discharge employees. It shows an attitude on the part of the respondent to retaliate against the dentists. That's the position we take.

JUDGE ROSENBERG: Why would they want to retaliate against rumors that the clinic is going to close, in the context of Local 277s organizational campaign?

MR. EDELMAN: We take the position the statement constituted an implied threat to discharge employees.

JUDGE ROSENBERG: For what?

MR. EDELMAN: And was made because the clinic was aware that they were engaged in outside activities, namely, activities--organization activities on behalf of 277, and that the various representatives of the clinic were out to harass and out to threaten the employees at any excuse they could find.

That's the positon we take, your Honor.

If you agree with it, you do; if not, you don't.

You asked me to explain the position; that's precisely our position.

JUDGE EDELMAN: That's precisely what confuses me, how a statement by the clinic director, who says that he has said -- heard that dentists in the clinic have been spreading rumors that the clinic will close down, that the only one who can close it down are the higherups, and if these rumors persist why the people who spread them will be fired?

MR. EDELMAN: I think I have answered the question, your Honor, as best I can. I don't know what more I can add to the answer I have already given.

JUDGE ROSENBERG: If you cannot add any more, you may be in trouble.

MR. EDELMAN: Then we may be in trouble on that.

JUDGE ROSENBERG: Go ahead.

THE WITNESS: Could I say one thing?

JUDGE ROSENBERG: No questions.

THE WITNESS: Sorry.

JUDGE ROSENBERG: All right, go ahead, Mr. Edelman.

Q (By Mr. Edelman: Now, I direct your attention to April 1st and ask you if you were present at a meeting at which Joseph D'Angelo spoke?

A Yes, I was.

Q And where did this meeting take place?

A Also in the doctors' lounge.

Q And when did this meeting take place; about what time of day?'

A About four o'clock in the afternoon.

Q And can you tell me who was present?

A Mr. D'Angelo, all the dentists that were working that day, called on the loudspeaker and Mr. D'Angelo and Dr. Krauss.

Q About how many dentists were present at this meeting?

A Approximately twenty, I would guess. Depending on the working complement of the day.

Q And o you recall what Dr. D'Angelo's statement to the dentists when he addressed them was?

A Mr. D'Angelo read a statement which I found very insulting, to the effect that the union is aware of the outside activities of some of the dentists.

Q The union is--

A The Local 3, the administration. And they would expect us to behave in a professional manner, and not injure any of their patients or their --

Q Did Mr. D'Angelo use the words "outside activities"?

A Outside activities. That was the initial part of the statement.

Q And he indicated that they did not want you to injure any patients?

A Presumably harm the patients.

Q Now, were you--had you ever spoken to you about injurying patients?

A Absolutely not.

Q And do you, in all the years that you have worked at the clinic, had the group ever been assembled and warned against injurying patients?

A Absolutely not.

Q Were you aware of any other dentists that intentionally injured a patient?

A Absolutely not.

JUDGE ROSENBERG: On the day when Dr. Krauss cautioned people about circulating or starting rumors about the closing of the clinic, was any mention made by him of Local 277 or their organizational campaign?

A No.

BY MR. EDELMAN:

Q I direct your attention to April 22 and ask if you can recall a meeting of your section with Dr. Krauss on that day.

A Yes.

JUDGE ROSENBERG: April what?

MR. EDELMAN: 22nd.

Q About how many dentists were present at this meeting?

A I guess about nine, ten, filling section.

Q Where did the meeting take place?

A In Dr. Krauss' office.

Q What was said to the dentists by Dr. Krauss?

A In substance, Dr. Krauss said he has been checking within the past month or six weeks, he has been checking the records, and he has found an unusually large number of fillings falling out and he attributed this to deliberate sabotage on the part of the dentists.

Q Did he use the word "sabotage"?

A He used "sabotage" specifically. I personally asked him subsequently after this thing whether he thought this was--fillings do fall out occasionally; they always have,--whether this was within the last month or so, and he said, yes.

I said I did not believe it because I do not believe that anybody ever sabotaged or did any poor work deliberately. That was the major objection. He stressed that he felt it was deliberate; and that is absolutely untrue.

Q Now, in connection with your own patients, were you aware of an abnormal number of fillings that were falling out from your own patients within the last month or at any time in your career?

A I presume subsequently the same day I went in to see Dr. Krauss over some other matter, and I told him -- first of all he said it did not apply to me particularly, it applied to maybe one or two other dentists, I was involved in the fillings falling out. I said "In any event I'm sure no dentist working would deliberately do poor work. And that was a disgraceful and unprofessional thing to say."

Q Did Dr. Krauss respond to this?

A Yes, he did. He said "If you don't like it, you can leave." So, I'm not leaving. That was the end of that.

Q Do you recall having any conversations, either single conversation or overhearing any conversation during the month of March or April concerning Dr. Paul Maneto (spelled phonetically)?

A Yes, I do.

Q Was it more than one time or just one time?

A Oh, probably several times. Maybe three, four, at least.

Q All right.

Can you tell me what took place on each occasion?

A This was-- This was the doctor's lounge. Dr. Brunetto more or less is the supervisor, and he made the general statement to the effect that "Since you fellows have joined the union Dr. Krauss is very busy checking the records very carefully and making notations, so would you please be careful -- extra careful, even for technical matters, because the records, since you joined the union, have been checked very carefully, moreso than the usual routine?"

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JUDGE ROSENBERG: What was the date of this, again?

MR. EDELMAN: This occurred between March and April - - betweenMarch 11 and April 30th?

THE WITNESS: Yes. Until the clinic closed.

Q You say --

A Probably beginning, oh, I would say, probably April -- month of April.

Q Basically?

A Basically the month of April.

JUDGE ROSENBERG: Is there any particular allegation in the complaint, Mr. Edelman, to which that goes?

MR. EDELMAN: I have to check the complaint.

MR. GELLER: I think it is Paragraph 17, strict or closer supervision. The last sentence--last two lines.

JUDGE ROSENBERG: Is that it?

MR. EDELMAN: May well be. I have to check the others to be sure that it is not in any other as well.

I would say it certainly is covered by Paragraph 17, strictly, and closer supervision.

JUDGE ROSENBERG: All right.

Q (By Mr. Edelman) Now, you indicated that Dr. Brunetto had made similar statements on other occasions as well.

Were these also during the month of April?

A Basically during the month of April; yes.

Q And who would he be addressing his remarks to?

A To several dentists who were sitting in the lounge at that particular time.

Q Those present in the lounge?

A Those present, that's right, rather than a particular--he was sort of putting everybody on notice,"Since you joined the union, please be careful, they are checking the records. It is my job to check them or to deliver the message, so take extra care."

I mean, everybody takes care, normally, but sometimes a little technical matters, just don't look for arguments or--because you might cause problems.

Q I direct your attention now to April 30 and ask you if you came to work on that day.

A I did.

Q And can you describe what took place?

A I was told to wait in the reception room.

Q Who told you to wait in the reception room?

A There was a girl at the desk.

Q Reception girl?

A Reception girl.

Q She told you to wait at the desk?

A Until Dr. Krauss called me. Dr. Krauss called me in. He asked me if I have any belongings. He says, "Here's your check, it's self-explanatory, it's a short notice. Do you have any belongings? Go to your room."

I went to my room. I went to get my belongings. I worked there full time. We got some paperbags because I really had more than I can carry.

Q Did anybody accompany you to your room?

A Dr. Krauss.

Q Did you ask him at the time what this was all about?

A I did not.

Q Did you subsequently read the notice affixed to the check?

A Yes.

Q What did the notice say?

A Very simply said, "It is the opinion of the Joint Board to discontinue operations as of the 29th." It was one sentence.

Q Prior to this notice had you received any official notification, either from -- either orally or in writing from Dr. Krauss or Mr. D'Angelo or Mr. Brunetto or any other management official concerning the closing down of this clinic?

A Absolutely not.

Q Had you received any notice, either oral, written or any other form of notice from any of these above-named individuals that the clinic might possibly close down?

A   Absolutely not.

JUDGE ROSENBERG: The only discussion by Krauss or Brunetto or D'Angelo prior to the 30th of April, because of the economic situation that the clinic may have to be closed down?

THE WITNESS: No.

JUDGE ROSENBERG: Never?

THE WITNESS: Not-- Let me put it this way: there were -- certainly no official. There was an occasional rumor, but absolutely there was no question that the clinic was closing at all. It never came up.

JUDGE ROSENBERG: Did either of the three gentlemen whose names I have mentioned--

THE WITNESS: Right--

JUDGE ROSENBERG: -- tell you that the trustees, the Joint Board, either of them found out that their income would not--could not sustain this particular clinic?

THE WITNESS: Absolutely not.

Q   (By Mr. Edelman) You picked up your belongings; is that correct?

A   That's correct.

Q   And you left the clinic, I take it?

A   Yes.

A Yes.

Q Did you have appointments scheduled for your patients during the month of May?

A Yes. I presume so. Yes. I don't have the books, but I was told to come back and I presume I did; yes. They were all--we worked up the night, the next morning it was closed, --

Q I see.

A -- taking x-rays and things like that even the day before. We took x-rays of people and so forth. And I guess they were just out of luck.

MR. EDELMAN: I have no further questions of the witness at this time.

JUDGE ROSENBERG: Mr. Geller?

MR. GELLER: Do you have an affidavit?

MR. EDELMAN: I do.

MR. GELLER: Your Honor, may I begin the cross-examination and then read the affidavit when I choose to and take a break then?

JUDGE ROSENBERG: And why do you want to do that? Don't you think it would be helpful--

MR. GELLER: No substantive difference; just a matter of style.

JUDGE ROSENBERG: All right.

MR. GELLER: Just a few questions before I do that.

CROSS EXAMINATION

Q (By Mr. Geller) Dr. Nesse, do you recall any discussion or any explanation about the subject of pay raises for dentists in 1974?

A No. I did not--

Q Were there pay raises for dentists in the latter part of 1975 or 1976?

A No. To the best of my knowledge, no.

Q Were there pay raises before that time?

A From time to time; yes.

Q How frequently did you get a raise since coming to the dental clinic?

A I got a raise, I guess, twice--once, I guess.

Q Are you sure of that? Only one raise?

A Let me think.

Q Please do, because I don't want to pull any tricks and we have pay records; so think about it.

A I started eleven-fifty.

Q Nothing funny about my questions?

A No.. I started eleven-fifty and I wound up with twelve - fifty. It may have been two increments.

Q When did you start in the dental clinic?

A 1973.

Q And your last-- When did you begin getting twelve fifty, let's put it that way?

A I guess it was in '75.

Q What time in 1975? What month?

A I--

Q Was it the early part or the latter part?

A Maybe-- I really don't recall, because I would say the amount of moneys really wasn't that significant. I wouldn say as of this date I got a raise. I really don't know. You probably have the records, you know better than I.

Q But you haven't gotten a raise since then?

A No. I mean the last time I got a raise--well, whenever it was, it was sometime in 1975. The date I really don't know. I cannot tell you.

Q Do you know if any other doctors have gotten a raise sinc you have gotten a raise?

A They may have. I don't know.

Q Was there any discussion among the dentists about the-- whether there were pay raises or not?

A Some of the dentists felt they were due for a pay raise, but knowing the condition of the industry, I guess they did not get raises and that was the end of it.

Q Was the condition of the industry, as of the Pension Committee's fund, was that explained to anyone, to your knowledge?

A It certainly was not explained to me.

Q Were you in the lounge, in the dentists' lounge, in

October of 1975 when Dr. Krauss said something about the subject of pay raises?

A He said there were to be no pay raises that year and that's it.

Q Did he explain why?

A As I explained, because of the industry's poor condition.

Q So you knew that things were very bad economically with the Pension Committee as of October 1975; is that not true?

A I did not know their economic condition. He said there were to be no raises because the condition is poor. I just took his word for it. I have no access to their books or anything. Just accepted it and that was it.

Q Now, was the economic situation raised at any subsequent time, economic difficulties by Dr. Krauss?

A Not that I recollect.

Q How about by Dr. Brunetto?

A Dr. Brunetto, no.

Q Would the dentists discuss it among themselves?

A Occasionally in a -- you all -- as I said, I never engaged in such matters. They may have, but I mean--

Q Did there come a time in the latter part of 1975 or the early part of 1976, that dental supplies became more difficult to obtain on the part of the dentists?

A Not to me.

Q Did the procedures for obtaining supplies change in any way?

A Not to me.

Q Were you present at the staff meeting in 1975?

A Yes.

Q Was it in June 1975, do you recall?

A That was the last--

Q Or April 1975?

A I presume--yes. Whenever it was, I was at the meeting.

Q Now, who spoke at this meeting?

A Dr. Krauss.

Q Did he speak on the subject of the quality of the job being done by the dentists?

A Yes.

Q Did he make reference to work rules?

A Yes.

Q Did he go into specific instances of the way dentists should and should not treat their patients professionally?

A Yes.

Q Did he go into technical detail?

A Yes.

Q Do you recall him warning dentists what would happen to then if they did not follow those specific rules?

A Yes.

Q What did he say by way of warning them? What was the warning?

A "If you don't do the work you are supposed to do, which you are paid to do, you will be fired."

Q Did he make any reference to keeping records at that time?

A He always kept records, that's right.

Q And this we are talking about April of 1975, are we not?

A 5, yes.

Q Were you at any previous staff meetings?

A One before that.

Q When was that, approximately, 1974?

A I guess the year before.

Q Did Dr. Krauss do substantially the same thing in 1974?

A Right; correct.

Q At these meetings did Dr. Krauss go down specific sections in the department and refer to specific technical practices in each?

A Sure; yes.

Q Now, you testified that you felt that Dr. Krauss was very wrong to question the quality of work or whether any deliberate harm was being done to patients; is that correct?

A No, that is not true. I did not question that.

Q Put it in your own words, then.

A You see Dr. Krauss' job is to supervise the clinic, and to make sure--to see that the work is done correctly. If the work is not done correctly it is indumbent upon him to notify the man who is doing it. But to imply that a dentist is doing this deliberately is very insulting and degrading. It cannot be done. I mean, it is not true. I mean, if a man does poor work that's his job to tell him so.

I'm not complaining about his supervising. That's his function. But to imply that a professional man for any reason would deliberately do something wrong is unprofessional it is unbelidvable.

Q Do you believe that it is wrong to accuse a professional man of doing sloppy work?

A No. Sloppy work, you have to show--sloppy is a very subjective thing. It all--

Q You think it is wrong to accuse a professional man of saying that he does--he is doing inadequate work in that it is inadequate, knowing that it is a violation of the rules of the clinic?

A Yes. If he does it knowingly, that's his--that's certainly--but you certainly have to prove he did it knowingly.

have cavities. How would you know they did not have cavities?

Q Very good.

Put another element into the hypothetical. What if the x-rays showed --that were done on the teeth before they were filled --showed there was no evidence of decays or caries?

A X-rays are not sufficient. You can tell visually what might not be seen by x-rays. That's common, really. It is not even a matter of argument.

MR. EDELMAN: I'm going to renew my objection, your Honor. It is becoming far afield from anything that is in evidence in this case and certainly not relevant as to whether or not dentists were threatened.

JUDGE ROSENBERG: I think it is very pertinent to Paragraph 17 of the complaint and I'll overrule the objection.

MR. GELLER: What was the last question? There's one outstanding.

JUDGE ROSENBERG: Your last question dealt with suppose x-rays showed there were no caries --

Q (By Mr. Geller) Did the doctor answer--

JUDGE ROSENBERG: Sometimes x-rays don't show everything.

Q Sometimes they do, is that not correct?

A That's right.

with other dentists, determined that to his satisfaction that teeth were being filled that had no caries, what would you think--

A He should tell the doctor, that's all. I don't understand--

Q Were -- Would his comments about deliberately doing sloppy work be more acceptable to you in that case?

A It might be. depending -- really depending on the situation, and what the doctor said.

These are--hypothetical questions don't work like this. I mean, I don't know. I cannot answer a hypothetical question like that.

It depends on the individul and you have to tell him and see what's wrong; that's all.

You cannot--there are no general rules for these kind of things. It is -- it depends on the situation. He should say something. If there is anything wrong, that's right.

JUDGE ROSENBERG: Basically what he is asking you-- maybe we can wind all of this up with this question -- basically what he is asking you is that -- is it possible for somebody persistently to fill a tooth that doesn't have a cavity without knowing what he is doing?

A No.

JUDGE ROSENBERG: It took you a half hour.

MR. GELLER: May I ask for a brief recess?

JUDGE ROSENBERG: I suppose we can take five minutes.

MR. EDELMAN: Before we do, my records indicate the cards : of Sidney Miller was admitted into evidence yesterday.

JUDGE ROSENBERG: It does on my record, too.

MR. EDELMAN: I notice on the exhibits it does nor -- does indicate. I wonder if we can correct that.

JUDGE ROSENBERG: Suppose we take five.

(Whereupon, a short recess was taken.)

JUDGE ROSENBERG: On the record.

Q. (By Mr. Geller) Mr. --

JUDGE ROSENBERG: Mr. Edelman.

MR. EDELMAN: Before Mr. Geller proceeds, I would like to at this time, by way of stipulation, move that GC 5Q for identification be admitted into evidence, that will be the authorization card of Lester Katz signed on 3/14/76.

JUDGE ROSENBERG: Any objection?

Mr. Geller?

MR. GELLER: No.

JUDGE ROSENBERG: All right. It is received.

Mark it.

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(Thereupon, the document referred to was marked General Counsel's Exhibit 509 in evidence, of this date.)

Q Now, before March the 15, when the telegram was sent and received, did you have any problems with Dr. Krauss along the lines of his criticism of you, your work?

A No.

Q Do you know if other dentists did?

A Indirectly, probably.

Q What would be the nature of that criticism?

A It was delivered privately. As I say, I did not meddle very much in local politics. It was never publicly announced. It was always private. I did not mix in that sort of thing. There was never any public contemplation. I suppose he complained about this happening, it was spoken to privately but I never really personally have any involvement in anything of that sort.

Q Do you know how Mr. Krauss treated other dentists before March 15?

A In what way?

Q The manner of his treatment.

A With Dr. Krauss, I guess it was a matter of personality. He is certainly not the most pleasant personality. That's his manner. I don't understand what you mean, really.

Q Well, was Dr. Krauss--would you say that he was--before

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March the 15th, would you say that he was insulting dentists even before March the 15th , that he was insulting to dentists, in your opininn?

A Yes.

Q Would you say--

A General manner.

Q Would you also say in your opinion that Dr. Krauss would downgrade dentists before March the 15th?

A What do you mean by "downgrade"?

Q What do you understand by the meaning of the word "downgrade"?

JUDGE ROSENBERG: Let's not get into semantics, You know what "belittle" means?

THE WITNESS: Yes.

Q Would you say that he downgrades -- that he degraded dentists before March 15, in your opinion?

A I would say, personal basis, that's right.

Q Did his insulting and degrading, comments before March the 15th, in your opinion, was that related to the quality of their work as well as personal comments?

A It was his opinion, I guess. That's his opinion as to the quality of it.

Q And how far back would this treatment of dentists go in your experience as -- at the dental clinic? Was it something that began February 15th?

A No. That was his personality.

Q It would go back to your very start at the clinic?

A Right. I mean, that's just his personality.

Q Now, after or towards the end of March, did it happen that the dentists would tell their patients that the clinic was about to close, towards the end of March?

A Yes, that occurred.

Q You know that the dentists would tell th eir patients--

A It occurred specificzlly for one day or two days at the most.

Q Do you know what his patients did upon learning that the clinic would close?

MR. EDELMAN: Objection to the form of the question. There is no evidence that the clinic did close--

Q I meant do you know what the patients would do in response being told by the dentists that the clinic would close.

A They would complain--they would tell the front desk, that was their prerogative.

Q Do you know what happened afterwards as a result of those complaints?

A I presume they had some difficulty. The only problem--I suppose if I can clarify it. The rumor that the clinic is closing--the problem is the fountainhead, and the fountainhead of that rumor was Dr. Krauss.

. There are rumors, but as a specific instance, it was on a Monday, a secretafy came into the lounge in the afternoon, Miss Bonnie Rauch, in the afternoon, and--who is

Dr. Krauss' personal secretary, so she does not come into the lounge without Dr. Krass knowing. And she ostentatiously told one of the doctors, Dr. Rosen, specifically, after a certain date, he was not to schedule any more surgical patients bedause that was the cutoff date. This was the fountainhead of the rumor that the clinic was-- in other words, the dentists did n ot suddenly--there was no question the clinic ever was closing.

Then this thing came up and she implied the clinic was going to close.

Now you can draw any conclusion--in other words, she is his secretary, she tells this man in frontof all the other people not to take any more dates because that's going to be the end of the work. That's where the -- so, in other words, the denyists did not make this -- did not come out of the vacuum. It came out of this source. So for one day -- she said it was closing, so the dentists, well, if it is closing, it is a possibility the clinic might close.

JUDGE ROSENBERG: What was the date on which she came into the lounge?

THE WITNESS: I think it was--the 29th, I would say, of April.

Q You mean of March?

A Of March, I guess, yes, yes. It was April Fool's Day when Mr. D'Angelo came. So then -- that was, I guess, on a Monday, as I recall--yes.

Q Now, in that April 1st get-together with Mr. D'Angelo, do you recall that Mr. D'Angelo warned the doctors against harming or injuring patients?

Were those his words? Harming or injurying?

A Yes. You see, we did not have a record of what he said but that was the -- I believe he said that directly, but we don't have a record of it because they never really wrote it down.

Q Was he reading from something?

A He was reading from a piece of paper, right, which we thought we inquired -- but they never gave us a piec of paper. Then--

Q Whom did you inquire of whether there was any piece of paper?

A No. This happened at four o'clock. The clinic starts to work at four o'clock. It was a very deliberate and nasty statement to make to professional people.

The reaction was very immediate. Doctors got up specifically said and we object very vigorously.

Q In your recollection of this isn't it possible Mr. D'Angelo referred to the treatment or mistreatment of patients rather than the dentists harming the patients?

A No. The thrust was the dentists--he would speak, I think that was his specific word -- he probably has it written down somewhere--would exoect us to behave in a professional manner and not injure any patients. And the objection there was no question no doctor would deliberately harm any patients. And the dentists were in a furor there. It was four o'clock. You couldn't quit your job. He said we could come up to his office, but nobody did.

We decided not to.

Q Let me show you this bunch of yellow pages and ask you if you can identify it.

Is this your affidavit sworn to the 7th day of May that you gave to Mr. Kettler, an agent of the Board?

A That is, --

Q Would you please read to yourself page 8 from the top of the page for the next six or seven lines to reflect your recollection?

(Handing document to witness.)

Q Now, in your affidavit do you mention -- do you refer in those lines to the speech made by Joe D'Angelo on April the 1st?

A That is correct.

Q Do you refer to Mr. D'Angelo harming or injurying-- referring to the dentis harming or injuring any patient?

A I put it on the affidavit as purposely mistreat.

Q And that is all that is in the affidavit, that Mr.

D'Angelo referred to purposely mistreat patients?

A That's right. Purposely mistreat would be the same as harming.

Q Is it your recollection now that Mr. D'Angelo also said harming and injuring?

A This was the thrust of it. I cannot recall his specific speech. But the personally mistreat a patient certainly is to harm him.

Q Now you testified that--I believe you testified that you had heard of a meeting that Dr. Krauss had had with the people--dentists who worked in the dentures and brimwork departmern, did you mention that?

A Yes, I did.

Q Do you know-- Do you have any personal knowledge, direct knowledge of what went on during this meeting?

A No.

Q So that if you made any statements about who said what, they would come from other sources, wouldn't they?

A Correct.

Q Now, in detaling with Dr. Brunetto, have you ever gone to him on any professional business matter, that is arising in the course of your practice at the dental clinic?

A Yes, of course.

Q Could you give us an example?

A Let us say there was a tooth that had a large amount of decay and it is a question of whether they are going to make a bridge or not, whether to extract it or they wished to save it. I would ask Dr. Brunetto and he would do the final diagnosis and determination.

It is a routine, really. Not myself, personally.

Q Well, do you know on what basis he would make his decision?

A What do you mean "basis"?

Q How would he arrive at his conclusion?

A He was the overall supervisor, so he would eventually diagnose, let's say, as to whether a bridge were to be made, you would do one thing. And if a bridge were not to be made, you might do another. So he had an overall view. So that was his professional judgment. I mean, this is not a personal thing. So he had an overview of the way the objectives, and what his patients would have ultimately.

Q Did he tell you you had to -- I withdraw the question.

Is that the only time you have had any experience with Dr. Brunetto on this professional basis, the one occasion---

A No, it was an very-day occurrence.

Q Were all the occurrences like this to go to Dr. Brunetto for a diagnosis?

A Where necessary.

Q Where necessary.

A Right.

Q When you had doubts as to the proper diagnosis you would go to Dr. Brunetto; is that correct?

A Or he-- Not only necessary diagnosis, as to what the best, course of treatment is. Different patients were treated in different manners.

If there's any question, he did the diagnozing. I mean, that's the way a thing would work.

Q Had you ever disagreed with Dr. Brunetto in his diagnosis?

A Occasionally.

Q What have you done on those occasions?

A Deferred to his judgment.

Q Do you know of any dentists who have disagreed with Dr. Brunetto and who have not deferred to his judgment?

A No. Because his judgment ultimately was final.

Q Was final?

A His judgment was accepted. That's the way the clinic worked, since he was the second echelon, that was it.

I mean, that's no--it did not come up too often. There was no great argument in the clinic.

Q Are these the only types of contact that you have had with Dr. Brunetto, going to him for a diagnosis?

Can you think of any other type of contact that you had with him?

A In what way?

Q Okay. Do you-- How do you know whether Dr. Brunetto allocates wrk to the prosthetics and crown and bridge departments?

What basis do you have for testifying that you know that he allocates the work?

A Well, where he stands at his desk, there's a zheet. He keeps filling in the sheet.

Q Do you know on what basis then he fills in the sheet?

A No. I did not have to bother with that. I have no basis--I mean that's his job, and I have no --it is not my department, I'm not interested.

Q All that you know or say that you know is that Dr. Brunetto takes patients or rather refers patients to people in the various prosthetics' departments, crown and bridge?

A No.

Q And you don't know on what basis he refers that?

A No. That's not my department.

Q Now, have you ever had a patient who wanted a longer appointment than the half hour?

A Yes.

Q And whom have you gone to?

A Dr. Brunetto.

Q And what was the question involved there as to whether this patient should get longer than a half hour?

A Generally speaking some of these patients come from a distance, so they would like to have more work done. The routine the patient is given a half hour appointment. But if there are a reasonable amount of work and they come from a distance, the clinic will permit you like to do double the amount of work, you work for an hour on them.

You cannot do that because if they go to the front desk they will not get the hour. If you go to Dr. Brunetto and say it has enough work to be done and he signed the slip--

Q Does Dr. Brunetto ask you any questions before making the decision?

A No..

Q It is a pretty routine matter?

A Ultimately you have to ask him. That's the policy, I understand, of the clinic.

Q What would he routinely do?

A He says, is there enough work to do? And he would--you say yes, there's enough work to do. And he would say, all right, give him an hour.

Q Have you ever known Dr. Brunetto to deny an extension of the visit?

A To myself; no.

Q All right.

A Because I chose the cases which seemed reasonable. So--

Q Did Dr. Brunetto keep any records at all?

A That I don't know. I had nothing to do with the bookkeeping. I don't know what he keeps. I really don't know.

Q Let me ask you this: Has Dr. Brunetto ever criticized a dentist for the way he performed work, to your knowledge?

A Yes. What do you mean by "criticized"?

You understand this is a large clinic. We handl many patients. Sometimes we are very busy. I guess there is a certain amount--sometimes, because of the circumstances you might not do the right thing. He said, well, you could have done a little here or there.

Q On your direct testimony you stated that Dr. Brunetto would relay messages to the men from Dr. Krauss?

A Correct.

Q Did you ever know Dr. Brunetto to form a judgment of his own as to the work being done by another dentist and to communicate that judgment to the dentist?

A Whether it was his own judgment or Dr. Krauss' I don't know. I cannot speak for him.

Q You did not know whether Dr. Brunetto was forming--relayi his opinion or Dr. Krauss' opinion on those occasions, but--

A Sometimes he said Dr. Krauss showed me this and so forth. Sometimes he did not. So I mean nobody asked him particularly--it never happened to me very much, personally, so--and I reall did not delve into the other thing. So I really have no firsthand knowledge of this, I think.

Q Would you tell us then on what basis you have for saying that the half hour visits were a policy set by Dr. Krauss?

A This was standard operating procedure of the clinic.

Q Why do you say it was--

A Dr. Krauss is the director, so I presume he--that's his policy. I mean, the girls' routinely made half hour visits.

The director is responsible for saying--I would presume so.

Q But you would not know if that policy had been set before Dr. Krauss came?

A No. I have no idea--I mean, the way the clinic stands now, this is the way the clinic runs, he is the director, I presume he said that's it.

Q Since you came to the dental clinic, has it ever shut down on a day unexpectedly for weather or some other reason?

A An hour or two once for a severe snowstorm.

Q Did you know who made that decision?

A That I do--I really don't know, I guess, but it is rare. When it is impossible weather, hazardous and so forth--

MR. GELLER: No further questions.

MR. EDELMAN: I have no redirect.

JUDGE ROSENBERT: Mr. Edelman?

MR. EDELMAN: I have no redirect.

JUDGE ROSENBERG: All right.

You may step down.

(Whereupon, the witness was excused.)

JUDGE ROSENBERG: You have another witness that wouldn't take two hours?

MR. EDELMAN: Short one. Dr. Calem.

JUDGE ROSENBERG: Raise your right hand.

Whereupon,

SIDNEY CALEM

being first duly sworn by Judge Rosenberg, was examined and testified as follows:

JUDGE ROSENBERG: Be seated and give your full name and address.

THE WITNESS: Dr. Sidney H. Calem, 5630 218th Street, Bayside 11364.

DIRECT EXAMINATION

Q (By Mr. Edelman) When--

A The subpoena was sent to the wrong address, by the way.

Q I am glad you got it. Dr. Calem, you are a dentist; is that correct?

A   That's correct.

Q   How long have you been practicing dentistry?

A   Since 1941.

Q   Have you ever been employed by the Joint Board?

A   Yes, I have.

Q   And how long have you been so employed?

A   About two years.

Q   And-- What were your working hours?

A   ;rom 11:00 to 8:00.

Q   How many days a week?

A   Well, I worked 11:00 to 8:00, four days, and I worked from-9:00 to 1:00 on Saturday.

Q   And your rate of pay?

A   It was $13 an hour.

Q   And in what department did you work?

A   I worked in two departments, the Operative Department and the Crown and Bridge Department.

Q   That was during your entire employ--

A   No. I started in just the Operative Department and I gradually went into the Crown and Bridge Department.

Q   So when you were last employed, you were wrking in Crown and Bridge?

A   No. Both departments.

Q   Both departments. Okay.

Did you sign a membership card for Local 277?

A   I did not

Q Did you attend any union meetings?

A No, I did not.

Q Were you involved in any discussions among your fellow dentists concerning the pros and cons of union organization?

A Yes. During lunchtime and in the lounge.

Q Would it be a fair statement to say that you were not in favor of union organization?

A That's right.

Q I ask that you direct your attention to a period of time, sometime between March 1st and April 30th, and ask if you rec having a conversation with Dr. Krauss sometime during this period in connection with the union?

JUDGE ROSENBERG: What period is that again?

MR. EDELMAN: March 14, April 30.

A You mean a full conversation or--

Q Any part of a conversation, anything in connection wit the union.

A Yes.

Q Can you tell me where this conversation took place?

A This conversation took place in an operatory, in the-- one of the operatories of the Dental Department.

Q Can you specify which one?

A I think it was Room No. 1.

Q Okay. I see. I thought it was a special type of room.

A No.

Q Can you tell me how the conversation happened to take place?

A Yes. Dr. Krauss was working on a patient, I don't recall the specific patient, in Room No. 1. And he called me in to see something that he was--that he had done in the dental region. And while we were discussing that, he happened to say to me, "By the way, are you one of the men that signed with the union?" And I said, "No, I'm not." And that ended it.

Q There was some testimony yesterday concerning a conversation between Dr. Goldberg, Dr. Krauss and yourself involving Dr. Manford.

Do you recall that incident?

A I recall, not as good as Dr. Nesse seems to recall everything but I recall.

Q Can you tell us about the conversation that took place involving Dr. Manford?

A Yes. Dr. Krauss called Dr. Gus Goldberg and myself into his office and he told us about something that was done by Dr. Manford on a patient in relation to crown and bridge.

I seem to remember it had to do with an impression for a crown or for a bridge where the patient was wearing a removable dentre and either he did not take it with the partial in place or he did not send it to the lab with the partial or something like that, which was necessary in order for the lab to do the work.

Q This was Dr. Krauss' position, I take it?

A This was what Dr. Krauss said to us.

Q Had said to you.

All right.

Do you recall anything further that took place in this conversation?

A And he asked us what would you do to this man or how would you treat the situation if you were the director? And Dr. Goldberg said, "Well, I'm not the director. I cannot answer that-question. And I just did not offer any opinion at the time.

Q Was it Dr. Krauss' position that the failure to end the--what was it, I'm not sure.

A I don't remember exactly either but it had to do something with an impression, and it had to do with a partial denture that the patient was wearing in his mouth at the time, and it should have been taken either with the partial in place or sent to the lab with the impression or it was not. I don't remember the exact details.

Q Would it be fair to say that it was Dr. Krauss' position that Dr. Manford intentionally failed to send the denture to the lab?

A Well, I guess the impression that Dr. Krauss felt that this was such a basic thing, and that a man who had a lot of years of experience should not have made that mistake. And therefore, if he made the mistake, he felt that it might have been deliberate.

Q Now, was the matter subsequently resolved?

A Yes. I butted in at that time, and I said I don't think that Mr. Manford would have done it deliberately to either harm Dr. Krauss, the department, or the patient.

I think that if it was done, it was strictly a human failure, a human mistake, and that the--ether was careless or forgot but, but he never would have done it deliberately.

Q Isn't it a fact, Dr. Manford had recently recovered from a stroke?

A I don't know how recent because I wasn't there. He had a stroke. s

Q He had been a stroke victim?

A he had been a stroke victim. How recently, I don't know. I know he was not feeling well and various times he would lie down in the lounge, being dizzy, and he walked with a cane and everything else.

Q Do you know whether Dr. Krauss was aware of this condition?

A Yes.

Q Now, do you recall that during the con--during this conversation involving Dr. Manford the subject of the union came up?

A Well, it came up in the way that Dr. Goldverg at that time said that, "Look, Dr. Krauss, I want you to know that we are not out for your job. We are not trying to get you fired or for anybody to get you out of your job.

We know that you are a good administrator and we know that nobody else could do as good a job and we are not out for your job. That's how the subject came up.

Q What did Dr. Krauss say?

A Well, Dr. Krauss said, "I'm sorry, but I have to disagree with you. I feel that it was a personal vendetta against me, and that the reason that the whole thing started is that--because a lot of the men dislike me or dislike my manner and my way of talking, et cetera, et cetera.

Q And did he refer to what--was there any reference made to the union in this conversation as to -- in connection with Dr. Krauss' feeling of a personal vendatta against him?

A I don't understand the question.

Q I don't understand it either.

Let me rephrase it.

In connection with this conversation did either Dr. Goldberg or Dr. Krauss indicate that the personal vendetta had anything to do with the dentists' forming a union?

A Either Dr. Goldberg or Dr. Krauss --Dr. Krauss felt that that was the reason they formed it to start with.

Q Is that what Dr. Krauss had said?

A Well, he implied it.

Q Can you recall the words he used to imply it, as best as you can recall it?

A Well, he implied that the reason that themen decided to join a union or to get some local to represent them was because that some of the men disliked him or hated him or whatever word you want to use.

Q Did Dr. Krauss, at this time, indicate that as a result of the union organization he had been called upstairs to the Local 3 offices?

A No. He just made a statement that at the time that Local 3 received the initial telegram that Local 27 was going to represent the men, he was asked to come upstairs, and he was shown the telegram, I assume, and he was asked, "Did you know about this?" And he said, "No." And he did not know about it in advance and he said to us, "I got the feel that Dr. Krauss felt that --he felt foolish or felt stupid for all these things to be going on and he did not know about it and then, just to be surprised like this--

Q What did he say in this connection, if you can recall?

A You mean upstairs?

Q What did he say he had been told upstairs, if anything?

A He said that "How come you are supposed to have your finger on everything going on and you know everything that is going on, how come you did not know that this was happening?"

Q This is what--

A And it made him feel foolish or stupid.

Q He said--if I can understand your testimony correctly -- that they had told him upstairs, "How come you did not know that this was going on?"

And then he had said that as a result of it, he felt foolish?

A Yes.

Q During this conversation did he ask you why you did not tell him about the union organization?

A I think he did. And I said, "First of all, the first week before their initial meeting, I think at the Sheraton, everything was kept a secret from me. No conversation was had about it in front of me."

Everytime I came into the lounge and they were talking, "Shush, talk lower, Calen is here." Everything was kept a secret. I did not know about it until after that initial meeting.

Q Is that what you told Dr. Krauss at this time?

A No. I really told him that even if I had known I would not have squealed because I have to live with these men.

Q Doyou recall Dr. Krauss stating in connection with his conversation upstairs that they had stripped him of his powers?

A Yes. After that he said everything was out of his hands, whatever was going to occur now between Local 3 had nothing to do with him, it had to do with D'Angelo and Local 3, he had nothing to say anymore.

MR. EDELMAN: No further questions.

MR. GELLER: Can we have a few minutes?

JUDGE ROSENBERG: Suppose we take about five?

(Whereupon, a short recess was taken.)

JUDGE ROSENBERG: On the record.

Mr. Geller, do you have any cross examination?

MR. GELLER: Yes.

CROSS EXAMINATION

Q (By Mr. Geller) Now, Mr. Calem, I direct-- Dr. Calem, I direct your attention to the meeting that you had with Dr. Krauss and Goldberg concerning the work done by Dr. Manford.

Do you recall about when this meeting was, in late April, something like that?

A The date?

Q Yes. Relative to the shutdown. Was it shortly before.

A It was shortly before.

Q Now, when you came in was Dr. Goldberg already there?

A No. I think I -- I th ink I was the first one in the office. I'm not sure.

Q Now, was there any question of a misplaced part that the laboratory later found?

Do you know anything about that?

A Well, after that meeting in the office between Dr. Goldbert, myself and Dr. Krausss, I didnot get any direct converwation or information of the followup of what happened.

Nobody told it to me directly. So I don't know what happened. I don't know whether the lab found it or did not find it.

Q Well, wheh you say "found it," what are you referring to?

A The partial. It seemed that the crucial thing of the whole matter was the partial.

Q Now, what did Dr. Krauss show you when he showed you--did he show you anything during the course of that meeting? By that I mean physical objects.

A Yes. He showed me an impression or a model, I don't remember exactly. At that time I did not think that I would have to remember all these things. I just got a gist of what was going on and reacted accordingly.

AFTER RECESS

1:30 p.m.

JUDGE ROSENBERG: On the record.

Mr. Edelman?

MR. EDELMAN: General counsel will call as its next witness, Dr. Vierno.

JUDGE ROSENBERG: Raise your right hand.

Whereupon,

JOSEPH VIERNO

being first duly sworn by Judge Rosenberg, was examined and testified as follows:

JUDGE ROSENBERG: Be seated.

Give your full name and address to the reporter.

THE WITNESS: Dr. Joseph Vierno, V-i-e-r-n-o, 4 Crossway, that's all one word, Eastchester, New York 10709.

DIRECT EXAMINATION

Q (By Mr. Edelman) Dr. Vierno, you are a dentist; is that correct?

A Yes.

Q And how long have you been practicing dentistry?

A Thirty-three years.

Q And were you ever employed by the Joint Board?

A Yes.

Q And how long were you employed by the Joint Board?

A About fifteen months.

Q And during your employ at the Joint Board how many days a week did you work?

A I was there every day, on Mondays, Wednesdays, Fridays, full-time; Tuesdays and Thursdays from 4:00 to 8:00. And Saturday from 9:00 to 1:00.

Q And your rate of pay?

A $12 an hour.

Q And in wha tdepartment did you work?

A Operative dentistry.

Q That would be fillings, I take it?

A Right.

Q The head of that clinic was who?

A Dr. Krauss.

Q His assistant?

A Dr. Brunetto.

Q In connection with Dr. Brunetto, can you describe his duties, generally?

A Well, he more or less was in charge of all the departments. In my case, in operative, one of his main jobs was to okay a completed case and if we had any problems on any case, we would go up and speak to him about it.

Q What kind of problems might you approach him with?

A Oh, a decision as to what to do on a tooth, whether they wanted to do a root canal, an extraction or something like that.

Q You would not make such decision on your own?

A No, no.

Q How about scheduling patients, who would be in charge--

A The girl would schedule that. I'm talking about operative now. But when it came to prosthetics and crown and bridge, Dr. Brunetto and Dr. Kobrin would handle the scheduling of that.

Q Did you deal with Dr. Krauss on a day-to-day basis or ws that Dr. Brunetto?

A I would deal mostly with Dr. Brunetto.

Q Did you ever have occasionto have Dr. Brunetto relay instructions to you from Dr. Krauss?

A I don't really recall. I don't know anything specific. I wouldn't want to say yes or no.

Q You worked on the second floor of the building located at 156 - 11; is that correct?

A Yes.

Q Was there any other facilities located on the second floor?

A Yes. The Medical Department.

Q In connection with your department, how far in advance were patients generally scheduled?

A In my case I would say I was a good four weeks or better.

Q So that at any given point in time you could say that you had four weeks patients scheduled in advance?

A Oh, yes, yes.

Q And how many patients did you generally handle in a day?

A It's hard to tell you. It could go as much as 20, 24.

Q I direct your attention to a period of February, the month of February in 1976, and I ask you, during that period of time, did you make any contacts with Local 277?

A Yes, I did.

Q How were these contacts made?

A Well, Dr. Goldberg, he originated by, as he testified exactly what he did, he looked up in the book and just saw the name "Teamsters 277" and he called.

He did not give his name.

He then asked me, I think, a day or two later, if I would go in with him and see if we could form a union and--

MR. GELLER: I'm having trouble hearing.

JUDGE ROSENBERG: Can you speak up a little?

THE WITNESS: Yes.

And I took the phone number and I called Mr. DiStinti; and I made an appointment with--

Q Did you leave your name?

A No. But we made an appointment to meet at his office

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on the 5th of March.

Q Who would you say, based on your personal knowledge, was responsible for the bringing in of Local 277?

A Dr. Goldberg.

Q And who would you say was secondmost responsible for bringing in Local 277?

A I would have to say myself, because if he had given that phone number to someone else they would have been, but he handed it to me.

Q Was Dr. Brunetto involved in any of these--

A No, no.

Q Did a meeting with Dr. DiStinti subsequently take place?

A Yes, it did.

Q And would that be on or about March 5?

A [illegible]at was on March 5, on a Friday morning, at about [illegible]:00 o'clock.

Q And can you tell me who was present at this meeting?

A Myself, Dr. Warren, Dr. Goldberg and Dr. Kramer.

Q And was Dr. Brunetto present?

A No.

Q Had he been asked?

A No.

Q To your knowledge, was he contacted to at any time--was he contacted by you or by anybody else that you know of and asked to come?

A No.

Q Were you also in attendance at a meeting on March 14?

A Yes.

Q And there were how many dentists present at that meeting?

A Sixteen.

Q Sixteen dentists?

A Yes.

Q Do you know who they were?

A I'll try to--myself, Dr. Kramer, Dr. Goldberg, Dr. Warren, Dr. Garfield, Dr. Levine, Dr. Nachbar, Dr. Greenwood, Dr. Falkin. Did I say Garfield? Dr. Garfield?

Q Yes, you did.

Without going any further, during the meeting did you observe caqrds, union cards, being handed out and distributed?

A Yes; right.

Q And did you observe any of the individuals signing that card?

A Yes.

Q Who did you observe sign that card?

A Practically all of them. We were handed each other the pen.

Q Did anybody leave the room at any time?

A While we were signing?

Q Yes.

A No. Not that I know of.

Q After the cards were finished signing, what was done with the cards?

A Well, they were handed over to Mr. DiStinti and his assistant.

Q Did you see them handed over to Mr. DiStinti?

A Yes. Put them all together with our checks.

Q All right.

MR. EDELMAN: Your Honor, I'm going to renew my attempt to admit these cards and I will state to you a case Jimmy Richard Co., which is 210 N.L.R.B. 134 for your consideration before you rule on the matter.

I have underlined the applicable part in there.

(Mr. Edelman handing document to Judge Rosenberg.)

JUDGE ROSENBERG: Did you see each and every one of these individuals who were at this meeting sign their cards?

THE WITNESS: I would say more or less, yes.

JUDGE ROSENBERG: You saw them sign?

THE WITNESS: Yes. I would say so, because it wasn't a big room. It was a conference room, and a table and we were all around each other.

JUDGE ROSENBERG: Go ahead.

MR. EDELMAN: I move on the basis of the testimony by Dr. Garfield, which is dated the 14th and Lawrence Miller, which is dated the 14th, and Rudolph Falkin, dated the 14th and Robert Kramer, dated the 14th, and Seymour Levine, dated the 14th, be admitted.

I think that your Honor will find that ifyou examine the cards, all dated on the 14th, noting that -- I forget which individual it was, I think it was Dr. Alcalay that indicated he had signed it in the Sheraton, misdated it on the 15th, but did actually date it on the 14th, counting Dr. Alcalay's card, you will find that there were 16 cards which were dated the 14th which which-- which corresponds to the bestimony of Dr. Vierno, Dr. Goldberg, Mr. DiStinti, and we have the testimony here of Dr. Vierno who says that he witnessed the cards being signed.

Under such circumstances I would submit that the cards can be admitted into evidence.

JUDGE ROSENBERG: Did you sah that Dr. Beymour Levine was at that meeting?

THE WITNESS: Yes, he was.

JUDGE ROSENBERG: Did you see him sign it?

THE WITNESS: Oh, yes, yes.

JUDGE ROSENBERG: Mr. Geller. This is now on his offer, any objection?

MR. GELLER: Well, yes. The same objection, Unless-- Well, may I ask you. Dr. Vjedno--

VOIR DIRE EXAMINATION

Q (By Mr. geller) Do you recognize Dr. Levine's signature on the card?

A Would I recognize it?

Q Do you recognize it?

A I don't know. I'm lucky I can recognize my own signatur but the fact that I saw them sign it, yes.

JUDGE ROSENBERG: Did you see him sign it with th signature?

THE WITNESS: Well, I wouldn't know that that is his signature but I do remember these fellows signing.

JUDGE ROSENBERG: They took out a pen and signed it?

THE WITNESS: We handed the pen to each other. They did not have enough pens.

Q (By Mr. Geller) Now, did you-- Were you the first to sign?

A No. It is hard to tell who was the first to sign.

Q Was it all done simultaneously?

A No. It could not have been done--we did not have that many pens.

Q You had one pen?

A He had a few pens, let's put it that way.

Q There were groups of four or five signing at the same time.

A Maybe less than that.

JUDGE ROSENBERG: Have you finished with your examination?

MR. EDELMAN: No. I have not. I had moved for the admissinn of those cards, and counsel for respondent was on voir dire, I believe.

MR. GELLER: Yes.

JUDGE ROSENBERG: I just wanted to make sure.

Q (By Mr. Geller) When you were signing how many other people were signing something?

A It is hard to tell.

Q After you signed, what did you do after you signed and passed along the pen?

A We made out our checks.

Q So after you signed y0u were making out your check; is that right?

A The check, and the next fellow signed his.

Q I may take it, making out a check for a hundred dollars, I believe it is?

A A hundred and ten.

Q You were careful in making out that check and being observant as to what you were doing; is that c orrect?

you would not want to make it $1110 or something like that?

A Let us put it this way: I knew what was going on in that room.

Q While you were signing the check?

A Yes.

Q Were you aware of who was doing what around that time?

A They were all doing the same thing, signing checks and cards.

Q So that in fact--

JUDGE ROSENBERG: I would imagine, Mr. Geller, that the major burden of your defense should go to something more concrete than th is.

MR. GELLER: I only--my only point is I don't think that anyone could determine what fifteen other people were signing in a room when he himself was busy signing two documents, one--

JUDGE ROSENBERG: Unlike the other witness, the witness did claim that he saw each and every one of them sign a card, which is all that the case requires. The other witness, he does not know whether or not that specific card was signed by that specific individual.

MR. GELLER: Then, may I ask--

JUDGE ROSENBERG: Even apart from that, what I am getting at is this, Mr. Geller, isn't it your real defense that these people were not employees and whether they represented a majority on the 14th of May by virtue of the cards or even whether they represented a majority in the election that was held, that they were not employees?

MR. GELLER: That's correct. But I would like to preserve so that we can have the witness testify at a later time as to conversation between the Director of Administration and Mr. DiStinti that we did not at the time and even now it is a bit hazy in the minds of all concerned as to what went on.

JUDGE ROSENBERG: Well--

MR. GELLER: I don't--

JUDGE ROSENBERG: Do you have any more voir dire?

MR. GELLER: Yes.

Q (By Mr. Geller) Do you recall that the cards--do you recall seeing Mr. Levine sign some document?

A Yes. He signed a card.

Q And you saw him signing that particular card?

A Yes. All the cards were alike.

Q And you saw that fifteen other people signed the particular cards that bear their names?

A There were no other cards or any other documents to be signed.

Q Didn't each one also sign a check?

A Yes.

Q Did you see each one sign both the card and the check?

A I don't know what order they did it.

Q Are you sure they signed both?

A How could they get away without signing?

Q Well--

A I cannot see anybody accepting a check that isn't signed, so I assume it was signed.

MR. GELLER: I think-- I submit it is inherently implausible that this witness can authenticate the cards in question and therefore I will oppose the offer of evidence.

JUDGE ROSENBERG: Allright. I will overrule the objection and I will reverse myself on the card of Levine and I will admit General Counsel's 5M through 5S, on the basis of this witness' testimony rather than the preceding witness' testimony with regard to Levine as well as on the basis of this witness' testimony with respect to the authenticity of 5M through S.

(Thereupon, General Counsel's Exhibits 5M through 5S for identification, received in evidence.)

Q (By Mr. Edelman) I direct your attention to March 22, Mr. Vierno, and ask you if you recall having a conversation with Dr. Krauss on or about that day in connection with rumors?

A Well, there had been rumors going on about the clinic closing.

Q Where had you heard the rumor from?

JUDGE ROSENBERG: Wait a minute. I did not get that date. What was the date again?

MR. ADELMAN: Mardh 22nd.

A Rumors were from the laboratory men sending--these are the laboratory men they had on the premises -- spreading rumors that the clinic was going to be closed. One of the laboratory men called one of our operators, Dr. Alcalay, at his office. He had a private office, and told him---

MR. GELLER: Objection to this hearsay. Dr. Alcalay was on the stand and could have testified. At that point I am not sure whether Dr. Alcalay could have testified but it would have been more appropriate then. This is out and out hearsay.

JUDGE ROSENBERG: Mr. Edelman, do you have any response to the objection?

MR. EDELMAN: I will withdraw the question. I am going to move on to another area.

Q (By Mr. Edelman) I direct your attention to the latter part of March 1976, and ask you if you recall a meeting with Dr. Krauss and Dr.--and Joseph D'Angelo.

A Yes, yes; that was either on a Tuesday or a Thursday, because that is the day that I came in at four o'clock on a halfday, and the meeting was called for four o'clock. And Mr. D'Angelo, Dr. Krauss and another member from upstairs were there. And I don't know how many of the doctors were there, but there were quite a few. I'd say t least fifteen.

Q Can you tell me what took place during this conversation?'

A Mr. D;Angelo came in and read a statement; a handwritten statement. I don't recall exactly, but it was to the effect that he knew that there were certain activities going on outside the clinic, and it more or less boiled down to the fact that they did not want any sabotage or mistreating of the patients.

Q Was the word sabotage used by Mr. D'Angelo?

A Yes, yes.

Q Turn to the subject of rumors at this time, and I ask you if you recall having a conversation on March 22 with Dr. Krauss concerning rumors.

A No. That was March 24, if I remember correctly; it was on a Wednesday.

Q Twenty-fourth. All right.

A Now, what happened, I had this patient, a woman, who was--had come in from Florida. She was one of the wives of the retired members, and she was to have a denture made--remade. She had paid for this denture before, and I was taken by surprise because I says, "Well, you better go up and make an appointment fast because I understand there's rumrs or talk about closing the clinic. And she asked if it was all right to use my name. I says, yes, certainly, it is all right, because if you don't move fast you are not going to get your denture.

JUDGE ROSENBERG: This is when?

THE WITNESS: On the 24th. I think that was a Wednesday.

JUDGE ROSENBERG: Of what month?

THE WITNESS: Of March. And she did go out and she was reluctant to give my name but she did. About five, ten minutes later Dr. Krauss came down the hall screaming my name out,"Dr. Vierno, I want to speak to you."

Well, he spoke to me.

He says, "I'm not going to have you spreading rumors."

I says, "I'm not spreading any rumors."

And at that point he told me "If you want to take your hat and coat and leave--"?

I said, "I'll do as I see fit."

Q Did you have any other further conversations with Dr. Krauss concerning starting of rumors about the clinic closing?

A No. Except for the time when he got the fellows together.

Q When did that take place?

A Oh, I don't know.

Q April? Was it April, this conversation in March 24?

A Oh, yes.

Q Couple of weeks?

A It is hard to tell, because there were so many conferences going on there. He was having men in one room, the prosthetic men, the crown and bridge men. I don't know. But I know he got the men together.

Q Where was this?

A In the lounge, in the doctors' lounge.

Q About how many men were present?

A Usually you can always figure anywehre from 12 to 15.

Q Can you tecall what, if anything, he said at this time?

A This business about rumors of the clinic closing would have to stop because if he received any information about the clinic closing it would come from upstairs.

And then we would be told. And if anybody started any rumors after that they wuld be treated summarily.

Q Did Dr. Krauss indicate to you, either at this meeting or in a conversation with you on March 24, that the clinic might close?

A No.

Q Did he at any time, prior to April 30, indicate to you in any way that the clinic might close?

A No. The only thing was that--on one of the days when his secretary came into the lounge--

Q I'm not asking you about Dr. Krauss'secretary. I am asking you if Dr. Krauss himself--

A No.

Q -- or Mr. D'Angelo, indicated to you in any way that the clinic might close?

A No.

Q Now, going back to that meeting with Mr. D'Angelo concerning sabotaging the patients' teeth, prior to the union, had you ever been warned about sabotaging patients' teeth?

A Well, yes, by Dr. Krauss. Either it was before or after.

Q I'm talking about before.

I ask you this: Before March 14, the date you signed the union card, were you ever warned--

A Oh, no, no, no, no.

Q Did you ever--knowingly sabotage any -- did you ever intend to sabotage any person's teeth?

A Never did.

Q Do you know of any dentist that engaged in such practice?

Q Do you know of any dentists that engaged in filling teeth where there were no fillings required?

A No.

Q No dentist ever told you that he had done this?

A No.

Q Do you recall having a conversation with Dr. Krauss concerning time that you spent with a patient?

A Yes.

Q When did this take place?

A Well, this took place after the 14th.

Q Of March?

A Yes. The exact date, I don't recall.

Q You testified at a National Labor Relations Board hearing on April 5th?

A April 5th.

Q That was in connection with a petition filed by Local 277?

A Right. I was one of the five.

Q Did the conversation take place after you had testified t thisahearing?

A I would say yes.

Q All right.

Now, where did the conversation take place?

A I had a young patient about nine, ten years old boy, and it was the policy of the clinic that you had to keep a patient in the chair for twenty minutes. Well, it so happens that I was finished with this little fellow and I could not see any sense in letting him stay in the chair any longer.

Q How long did it take you to complete his work?

A 17 minutes, and I was called by the desk, by Dr. Krauss, why I don't keep him there for twenty minutes.

Q You were called by the dentist and then you were told to go in Dr. Krauss' office?

A Right. No, not in to the office. This was at the appointment desk.

Q I see. Did you have a converaation with Dr. Krauss?

A Yes.

Q Where did the conversation take place?

A Right at the appointment desk. He wanted to know why I did not keep the patient for twenty minutes.

Q Did you give him an answer?

A Yes.

Q What was your answer?

A I said I had finished him in 17 minutes and I did not think it was necessary to keep the poor kid in the chair another three minutes.

Q Did Dr. Krauss respond?

A Yes. He says, "Well, next time you keep him for twenty monutes."

Q Did you ever complete work on a patient before twenty minutes?

A Oh, yes.

Q And what, if anything, had you done at that time in instances where you had completed work in less than twenty minutes?

A I let the patient go.

Q It was normal practice for you to let a patient go if you completed--

A And I couldn't do anything else; yes.

Q Do you know whether other dentists in your department did the same?

A Oh, sure.

Q Would you say this was common practice in the Operative Department?

A Yes. And many a times it would be thirty minutes on a patient.

Q Had you ever been warned before about leeting a patient go before twenty minutes?

A No.

Q I direct your attention to April 30 and ask you were you at work on that day or did you report to the clinic on that day?

A Yes.

Q Can you describe what took place?

A Well, usually we try to get there early on the 30th to cash the checks at the bank. And I was--I was the first one there. I went up to the clinic, and one of the girls said to go in to see Dr. Krauss.

I went in there and he had a bunch of envelopes and he gave me mine which contained my check, a statement from the Board upstairs that they were discontinuing the dental benefits, and our registration certificate. And I was asked if I had anything in my room.

I said, "Yes."

We went in there and I took what I had. And I went into the lounge, I figured I would go in the lounge and wait for other fellows to come up but he came in and told me to get out of the building, leave the building immediately.

Q Prior to the notification on April 30th, had you had any written or oral notification from Dr. Krauss, Dr. Brunetto or Mr. D'Angelo that the clinic was going to close?

A Nothing.

Q Did you have patients scheduled for the month of May?

A Oh, sure.

Q About how far in advance?

A I understand my patients were booked a good four, five weeks in advance.

MR. EDELMAN: No further questions.

JUDGE ROSENBERG: We will take a five-minute recess while you show Mr. Geller the affidavit. Is there an affidavit?

MR. EDELMAN: Yes.

(Whereupon, a short recess was taken.)

JUDGE ROSENBERG: On the record.

Do you have any cross examination, Mr. Geller?

MR. GELLER: Yes.

CROSS EXAMINATION

Q (By Mr. Geller) Mr. Vierno, is it your testimony that Dr. Goldberg first mentioned Local 277 to you?

A Yes.

Q Is it not a fact that you come into the Dental Department regularly with Dr. Brunetto?

A No.

Q Have you ever come in with Dr. Brunetto, that is, shared transportation with him?

A No, never. Even though we live nearby, no.

Q Did you inquire of Dr. Goldberg where he had gotten hold of Local 277?

A Yes.

Q What did he say?

A Out of the phone book.

Q Which phone book?

happened.

Q After all of what happened?

A After the telegram, which was on a Monday, the next week was the 22nd, when all the rumors were flying, and on the 24th, a Wednesday, that was the day, definitely. I wish I could remember her name.

Q And you say it was a week later or more than a week later that Joe D'Angelo came down and made that speech?

A I don't know. They seem to think it was the 1st of April, so it would have been about a week later.

Q Well, when do y ou think that Joe D'Angelo's speech was in relation to your telling the patient what you did?

A I would say about a week or so.

Q Now, what basis do you have for saying that you knew that your appointments stretched four or five weeks in advance?

A Because the girls out there told me, and the patients told me that th ey had to wait.

Q That they had to wait--

A They had to wait a month or five weeks for an appointment.

Q And on that basis you assumed that your appointments stretched four or five weeks in advance?

A Yes. I saw the books myself.

Q Did you see the books relative to you?

MR. GELLER:. I am trying to establish, and I think I can say it in a straightforward way at this point, that the cavities that were not filled were not touched, it made no difference whether--

JUDGE ROSENBERG: That may be so, but there--bt the filling might have been necessary even though they were not touched.

MR. GELLER: There's no question a filling was indicated.

JUDGE ROSENBERG: I don't see that you have gained too much by pursuing this line. It doesn't help me one way or the other.

MR. GELLER: No further questions.

JUDGE ROSENBERG: Do you have anything further, Mr. Edelman?

MR. EDELMAN: No further questions.

JUDGE ROSENBERG: You may step down.

(Whereupon, the witness was excused.)

JUDGE ROSENBERG: You want to call your next witness?

MR. EDELMAN: I would like to call Dr. John Warren, please.

JUDGE ROSENBERG: Raise your right hand.

Whereupon,

JOHN WARREN,

called as a witness, having been first duly sworn by Judge Rosenberg, was examined and testified as follows:

JUDGE ROSENBERG: Be seated.

Give your full name and address, and speak up so that everybody can hear you.

THE WITNESS: I'm John Warren. 647 B. Heritage Village, Southbury, Connecticut.

JUDGE ROSENBERG: Proceed, Mr.Edelman.

DIRECT EXAMINATION

Q (By Mr. Edelman) Doctor Warren, you are a dentist; is that correct?

A Yes, sir.

Q And how long have you practicee dentistry?

A Forty-four years.

Q A long time.

Have you ever been employed by the Joint Board?

A Yes.

Q And about how long were you employed by the Joint Board?

A As far as I recall three and a half to four years, somewheres around there.

Q And can you tell me how many days you work at the Joint Board?

A Three days a week.

Q And what was your rate of pay?

JUDGE ROSENBERG: The answer is what? You have to say yes or no.

A He was not present.

Q You were present, I take it, at the meeting on the 5th with--

A Yes.

Q And who else was present?

A Dr. Kramer, Dr. Vierno, Dr. Goldberg and myself.

Q I direct your attention to some period of time either the end of March, the beginning of April, following the union meeting of the 14th, and ask you if you recall a meeting of the dentists with Mr. D'Angelo.

A I do.

Q And can you tell me what time of day this meeting took place?

A About four o'clock in the afternoon.

Q About how many--

JUDGE ROSENBERG: Excuse me, Mr. Edelman, there is no controversy as to these events as put in by your past two witnesses. The weight of the evidence does not mean numbers.

Is there any specific incidents?

MR. EDELMAN: I did want the doctor to testify in connection with the conversation because I felt that his testimony might corroborate certain words that were used by another witness.

JUDGE ROSENBERG: No dispute. Why do you need to corroborate? All right. Go ahead.

MR. EDELMAN: It probably will be shorter than debating.

Q (By Mr. Edelman) Can you tell us briefly what Dr. D'Angelo said to you?

A Mr. D'Angelo read from a handwritten statement that the activities of certain men in our group were such that he hoped it would not influence our treatment of patients in any way in a dilatorious aspect. It would not influence our treatment of patients.

Q Do you recall Mr. D'Angelo using the words "outside activities" or that phrase?

A Yes.

Q Can you recall how that phrase was used?

A Somewhat in the fashion that I have quoted. That's about the best I can do.

Q Can you set it forth again?

A That the outside activities of some men in the group should not influence the handling and treatment of patients in any way; that the committee felt that the properhandling of patients was their primary object, and that the dentists, because of their getting together in a group, might try to upset the applecart, as it were.

Q I direct your attention to April 22 and ask if you can recall a meeting of your department with Dr. Krauss?

MR. GELLER: April what?

MR. EDELMAN: On or about April 22nd.

A I think so; yes.

Q Where did the meeting take place?

A In his office.

Q How many dentists were present?

A I think maybe ten or twelve; thereabouts.

Q Do you recall what took place during the meeting?

A It was in relation to the quality of work that was being turned out. There was one person very recently employed who--Dr. Wohlman, by name, who in his curriculum vitae had said he was employed as a researcher down at the University in dental materials, and Dr. Krauss, addressing himself to Dr. Wohlman, asked him how long should a filling last. Dr. Wohlman said that's a hard question to answer, there's so many variable factors, and he wasn't very pleased with the answer, of course, but he said lately to him fillings have been falling out.

Q Who said this?

A Dr. Krauss, and it wasn't fair to the patients, that such a thing all of a sudeen should be happening.

Q Had you any knowledge in connection with your patients of fillings suddently falling out?

A Nobody had been called to my own attention personally that such was happening.

Q Prior to the union meeting on March 14, had Dr. Krauss ever criticized the operation of the Operative Department in such a manner?

A Not to the extent that it had been going on. Naturally Dr. Krauss in a supervisory capacity probably did have his finger on all operations. But it seemed to be exasperated and exaggerated to us at the time.

Q Well, in what way, can you describe?

A The tempo of it kept increasing.

Q I direct your attention to April 30th, and ask you if you arrived at the clinic on that day.

A On April 30 -- the night before on the 29th, a dear friend of mine had died, I had asked Dr. Krauss if it would be all right if I came in a couple of hours later the next morning because I had to attend a funeral.

He said, "Oh, it wouldn't matter much anyhow, you can come in at that time. You can come in later."

I arrived somewheres around noon, 12:30 on April 30.

Q In your phone conversation with Dr. Krauss at this time did he indicate--

A That was a personal address to him. It was not by telephone.

Q I see.

Did he indicate to you that the clinic was going to be closing?

A No. "He says you can come in later. It wouldn't matter much."

Q Wh-t time did you arrive?

A About 12:30.

Q What took place at that time?

A When I approached the front of the clinic building I noticed the entire staff almost congregated outside the building engaged in very animated conversation. And they apprised me of the fact that the clinic had shut down. And I was to go upstairs and get my check.

I came upstairs and got my check. I came upstairs, one of the girls said to me that Dr. Krauss would see me and Dr. Krauss handed me an envelope saying that the envelope contained my check and a letter which would explain every circumstance connected with it, and if I had any personal belongings, would I please remove them.

Q I see. And did you go to your room alone?

A No. I was accompanied by Dr. Krauss.

Q And did you remove your belongings, at that time?

A Yes.

Q And you left?

A Yes.

Q Prior to April 30th had you received any notice from either Dr. Krauss or Dr. D'Angelo or any other official of the Joint Board that the clinic was going to close?

A No.

MR. EDELMAN: No further questions.

MR. GELLER: Is there an affidavit?

MR. EDELMAN: Yes.

JUDGE ROSENBERG: Let's recess for about five minutes while Mr. Geller reads the affidavit.

(Whereupon, a short recess was taken.)

JUDGE ROSENBERG: On the record.

Mr. Geller, do you have any cross examination?

MR. GELLER: Yes.

CROSS EXAMINATION

Q (By Mr. Geller) Dr. Warren, did there come a time that you heard rumors that the dental clinic was closing?

A Yes.

Q When was this-- When did you hear these rumors in relation to the meeting with Dr. Krauss on March 31 and with Joseph D'Angelo on April 1st?

A I cannot answer that. In retrospect--

JUDGE ROSENBERG: Was it before or after?

THE WITNESS: I really cannot recall, sir.

Q Well, do you recall from whom you heard this rumor?

A Yes. The first rumor I heard was from Dr. Alcalay. He told me that his laboratory man had called him, the man that he used to do his laboratory in his private office and told him that the clinic was going to be closed down. Did he know about it.

Q Now, does that refresh your recollection as to when you heard from Dr. Alcalay--

A I can't place it in time.

Q Was it around the time of your meeting?

A It was sometime in the midst of it, as I say, but I really cannot give you a time on it.

Q Now, on April the 30th, the day that you were also outside?

A Yes.

Q Was Dr. Brunetto among them?

A He was there for a short time; yes.

Q Did he say anything to you?

A He was--I think he was just as surprised as we all were.

Q Did he say anything?

A Just words to the effect that it was a complete surprise to him. He knew nothing at all about it.

Q Did he--how long did he stay, approximately, that you saw him there?

A Possibly 15, 20 minutes. He went upstairs and he left while he was upstairs.

Q The day before when you asked Dr. Krauss about coming in the next day, what time in the afternoon did you speak to Dr. Krauss?

A Must have been nightfall, about six, seven o'clock.

MR. GELLER: No further questions.

MR. EDELMAN: Nothing further, your Honor.

JUDGE ROSENBERG: All right.

You may step down.

(Whereupon, the witness was excused.)

JUDGE ROSENBERG: Do you have more witnesses?

MR. EDELMAN: Yes.

I call Dr. Theodore Eiges.

JUDGE ROSENBERG: Raise your right hand.

Whereupon,

THEODORE EIGES

called as a witness, having been first duly sworn by Judge Rosenberg, was examined and testified as follows:

JUDGE ROSENBERG: Be seated and give your full name and address.

THE WITNESS: Dr. Theodore Eiges, 21-14 K, Grand Central Parkway, Floral Park 11015.

DIRECT EXAMINATION

Q (By Mr. Edelman) Doctor, I take it that you are a entist?

A I am.

Q And how long have you practiced dentistry?

A 30 years.

Q And were you ever employed by the Joint Board?

A Yes.

Q And when did you begin employment by the Joint Board?

A I worked from 1968 to 1972, four years, at which time I left for personal reasons, and returned March -- I think it was about March 5.

Q Of 1976?

A Yes.

Q And how many days a week were you working during your second stint at the Joint Board?

A Three days a week.

Q And what days were those?

A Tuesday, Thursdan and Saturday.

Q And your rate of pay?

A $12.50 an hour.

Q What department did you work?

A Operative dentistry.

Q I direct your attention to a period of time approximately a week before the clinic closed, and ask you if you can recall a conversation with Dr. Krauss about a particular filling that you had made?

A Yes. I had worked on a 16-year old boy, and I inserted a filling, and I dismissed the patient after about twenty minutes and went to the doctor's lounge, at which time I was told through the loudspeaker to come to Dr. Krauss' -- to come to Room No. 1, I believe. And when I walked in there, the boy was seated in the chair and Dr. Krauss and Dr. Brunetto were there. And Dr. Krauss held a mouth mirror to the filling I inserted and told me that the filling I put in was inadequate, it had no carving, and to take the boy back to the room, and redo the filling. I protested, and I said that I thought that the fillng was adequate, you know.

So he said if I did not--if I did not redo it, I could leave, quit.

So I took the pateint back to my room and redid the filling. I took out the filling and redid it. And the boys--

Q Prior to your taking it out, did anybody look it over?

A Before I removed the filing I called, you know. Dr. Vierno worked in the room next to me and Dr. Garfield did surgery opposite, so I called them in to look at the filling, and they both told me, at that time, they felt the filling was adequate also.

Q Dr. Krauss' objection to it was that it did not contain a carving?

A He said it was not carved.

Q I take it the carving would be something that would conform the filling to the ridges and valleys in one's tooth?

A Yes.

Q And was it the clinic practice to carve fillings?

A We attempted to carve as often as we could, as much as we could. I felt the carving was adequate.

Q It had been carved?

A It had been carved; yes.

Q And it was Dr. Krauss' contention that it was not properly carved or not carved at all.

A He said it was not carved at all.

Q I'm sorry.

A It was carved.

Q It is your testimony it was in fact carved?

A Yes, it was.

Q Had Dr. Brunetto looked at the filling?

A Yes. Dr. Brunetto was in the room when they looked at the filling; yes. He said nothing.

Q Dr. Brunetto said nothing. And Dr. Vierno looked at that subsequently.

A He looked at it before I replaced the filling and Dr. Garfield looked at it before I replaced the filling and then I re½laced the filling, I took out my filling and put a new one in.

Q Did Dr. Garfield and Dr. Vierno feel the filling was--

A Yes. They told me there was nothing wrong with the filling.

Q After you replaced the filling, did anybody inspect the filling?

A After I replaced the filling, I went back to the lounge and I saw Dr. Brunetto. When I asked him if Dr. Krauss looked at the filling, he said no. He said Dr. Krauss told him to look at the filling, which he did and he also said it was all right and sent the patient--

Q The filling you put in as a second filling, any different than the filling you put in the first time?

A No.

Q Had you ever been-- Do you know whether the patient, the 16-year old boy that you had performed the work on, do you know whether he had complained to Dr. Krauss or Dr. Brunetto?

A No. I did not know what happened because I went directly to the lounge, and I don't know. I don't know what happened to him pm his way out. So how --whether he stopped, I'm not sure, but he ended up in that office.

Q Was Dr. Krauss the director of the clinic when you ere there the first stint that you served at the joint board?

A Yes.

Q In either the first stint or the second sting that you served at the Joint Board as a dentist, had you ever had--run into this type of situation?

A No.

Q Had nybody ever questinned your--a filling that you had placed in?

A Not that I recall.

Q Was it usual practice for Dr. Krauss or Dr. Brunetto to examine patients leaving the Operative Department to check their fillings?

A Not usual practice, but it was done now and then. Not usual practice.

Q Were you present at the clinic on April 30 when it shut down?

A No. I worked Thursday, the 29th.

Q Were you present on Saturday, May 1st?

A Yes. I came to work -- nobody told me, so I came to work at the would be normal Saturday, May 1st. And I come up at about 8:30, because we started at 9:00. Dr. Krauss was in the elevator when I got on. When we got out, he opened the door to the clinic and we walked in and it seemed deserted, so--

Q Dr. Krauss did not have any conversation with you in the elevator?

A No. I think he greeted me and I greeted him. And then he opened the door and went in, and it seemed dark, and there were two or three clerical workers there. And I asked him what happened. And he said it will all be explained in this envelope, which, you know, which contained your check and the letter. And I said I really don't understand, there is nobody here, you know. He said to me, well, he said, "You fellows joined the Teamsters," he says, "now you go get jobs as truck drivers."

So-- And then he said to me if I had any personal belongings to go get them in the room. And he accompanied me and I took my--some instruments I had and left. Nothing else was said.

MR. EDELMAN: I have no further questions.

MR. GELLER: You have an affidavit?

MR. EDELMAN: I do.

JUDGE ROSENBERG: Let's take a five-minute recess while Mr. Geller reads the affidavit.

(Whereupon, a short recess was taken.)

JUDGE ROSENBERG: On the record.

Mr. Geller.

CROSS EXAMINATION

Q (By Mr. Geller) Mr. Eiges, this remark by Dr. Krauss made in the elevator about since you are a Teamster, you can drive a truck." In what manner was that said?

A It was not made in the elevator. It was made in the clinic when I walked in.

Q With that qualification, in what manner was it said?

A Well, you know, he handed me the envelope and I -- he just said it, that's all. He just said now that you fellows joined the Teamsters, you can get jobs as truck drivers.

Q Did he raise his voice when he said it?

A No. He said it just as a matter of fact, he said it to me.

Q Did he say it kiddingly, would you say?

A No.

Q Did he--

A I think he said it with a little bit of anger, if I recall, a little bit of anger.

Q He did not raise his voice, though, did he?

A No.

Q Had he said anything to you before that, before making that remark?

A That day?

Q Yes.

A No. He said it -- I said to him what happened, you know.

Q Did you come up with him in the elevator?

A When I walked into the elevator he was in there.

Q And you rode up the elevator to the clinic without exchaging any words?

A He said "Good mroning, Theodore."

Q And nothing besides that?

A Nothing else.

Q How much late did he say this about the Teamsters and driving a truck?

A Well, he opened the door of the--the clinic was locked. They had locked the door. He used the key to open it up and I followed him afterwards.

Q There was nothing before that to make him angry with you?

A No.

Q Did he first give you your check?

A He handed me the envelope.

Q The envelope. And as he handed you the envelope he said this?

A He handed me the envelope and then I said, "Well, what happened?" And then he made the remark.

MR. GELLER: No further questions.

JUDGE ROSENBERG: Mr. Edelman?

MR. EDELMAN: Your Honor, General Counsel, with the exception of the cross examination of Dr. Goldberg, rests its case.

JUDGE ROSENBERG: You have nothing further of this witness?

MR. EDELMAN: That is correct.

JUDGE ROSENBERG: All right.

You may step down.

(Whereupon, the witness was excused.)

MR. GELLER: Your Honor, if I am not speaking there was a chilling motivation.

JUDGE ROSENBERG: There is excellent material for a brief to me.

MR. GELLER: Perhaps this is the time to consider the legal arguments because there has been no factual showing --

JUDGE ROSENBERG: I think I am aware of that, Mr. Edelman. What I would suggest you do tomorrow is go forward and renew your motion but go forward with the, as yet to me, unresolved -- fully unresolved -- issue of just what it was closed.

As a matter of 8(a)(3) certainly any company for any reason other than an illegal one can close down a shop or any part of it or a clinic in this case.

But when you have this backdrop, and I cannot blind myself to the fact that a petition was filed, that an electinn was held, if these people were not employees on the date of the election you get oft the hoof on many counts, probably on all.

If they were not employees, if for a valid reason the operation was terminated on April 30. So I would address myself tomorrow when we reconvene, after we hear the testimony of Dr. Goldberg, to that very issue.

I think it is critical to your case -- to

General Counsel as well.

MR. GELLER: We have the burden of proof for no reason other than the timing.

JUDGE ROSENBERG: I think there is enough of a suspicion of a prima facie case in any event I would defer ruling on your motion until I saw the record and did == and dispose of it in my decision.

But I am sure that you would not want to stand pat with the hand you just now have.

MR. GELLER: Not unless the motion were granted. I intend to go forward.

JUDGE ROSENBERG: Why don't you do that and renew the motion tomorrow when I hear what you have with respect to the causation of closure.

You understand what I --

MR. GELLER: That effect means to put on our whole case.

JUDGE ROSENBERG: I don't know if you have to put on your whole case as far as meetings or whatever other testimony there was with respect to the 8(a)(1)s by the preceding witnesses, again what in many instances what happened if it is in one context as ipposed to another would be determinative of whether or not whatever was said to these doctors were violative of the statute or were not. There is a good economic reason for going out and if that was the reason, then criticizing doctors, assuming I were to credit, fined for starting rumors about the clinic closing, takes on a completely different,, you know, posture, which would favor, I would assume, your side of the barricade.

MR. GELLER: I see what you mean.

JUDGE ROSENBERG: So why don't y9u be prepared tomorrow morning to go forward with the reasons why the plant was closed.

This is purely--this is still up in the air--not the plant, the clinic. And it ought to be relatively simple for you to put it on. You have the goods, or you don't. There wouldn't be any secret about it and it would be up to him then to see -- the ball is now in his court.

MR. GELLER: Okay.

JUDGE ROSENBERG: Okay. Off the record.

(Discussion off the record.)

JUDGE ROSENBERG: On the record.

For the remainder of the afternoon I understand that the respondent has volunteered to produce records for the General Counsel upon which it might rely to support its contention that there was a valid economic business reason for closing the clinic, and that the rest of the afternoon will be cevoted to a perusal of those

PROCEEDINGS

JUDGE ROSENBERG: On the record.

Whereupon,

DR. GUS GOLDBERG

having been previously sworn, resumed the stand and testified further as follows:

JUDGE ROSENBERG: I think the record ought to show that this is the witness, Dr. Gus Goldberg, who testified on direct on Monday, and then was excused because he had to take a physical exam and he is now here and available to Respondent for cross-examination.

CROSS-EXAMINATION

Q (By Mr. Geller) Dr. Goldberg, which phone book did you look up to get the name and address of Local 277?

A The white pages of the Manhattan book.

Q Now, when you looked it up in the white pages how many Teamster Unions did you find?

A I found the one Teamster Union, Local 277.

Q Which year's telephone book was it, the current telephone book?

A The one I have.

I don't know which one it is.

Q The one at home?

A The one at home.

Q Would it refresh your recollection to look at these pages which I am purporting to be a copy of the current telephone directory, the white pages of Manhattan?

I refer your attention to the entry, this particular entry headed International Brotherhood of Teamsters and Chauffeurs.

Now, is this what you saw when you looked it up in the phone book?

A No, it is not.

It was under Teamsters Union, marked Teamsters Union.

That is where I looked, not International but Teamsters Union.

Q You looked under it for Teamsters; is that correct?

A Right.

Q Now, on direct testimony you indicated that Dr. Krauss hired the clericals; is that correct?

A I did not make that statement.

Q Well, does Dr. Krauss hire the clericals?

A Does he hire them?

I don't really know who hires the clericals.

Q Is Dr. Krauss in overall charge of the clericals in the Dental Department?

A Well, in the clinic or the Dental Department I don't know who is in charge, but I know that he has supervision and supervisory powers at the clinic.

there or he called the girls into his office very often and gave them a good bawling down and lecture about some things that he was displeased with.

Q Do you know where Joe D'Angelo's office is?

A I do not know, sir, no.

I assumed that mostly the officers are on the fourth floor primarily, but some the third, but I don't know.

Q Does Dr. Brunetto ever treat emergency patients or does he just look at X-rays of emergency patients?

A It is possible that he may have but I personally have never seen him treat an emergency.

It is possible, he may have.

Q What connection does he have with emergency patients?

A Well, when they come in, the girls, they go to the girls.

They would say "Look, I have a toothache."

Or "a filling fell out" and then they are sent as a rule to Dr. Brunetto and Dr. Brunetto, as I stated previously, then makes the decision as to what should be done and to whom or to what doctor should the patient be sent so he can be treated.

Q Are Xrays first taken of patients before being sent to Dr. Brunetto?

A Yes.

Q Does he examine the X'rays?

A Yes.

Q And then he assigns the patient to doctors; is that correct?

A That is correct.

Q Do you know whether he assigns them directly or whether he sends them back to the clericals to assign them?

A Well, usually I think he sends them back to the clericals to be assigned by the girls.

Q So only some times he would assign the emergency patients who come in and who were sent to him; is that correct?

That is only some times?

A Some times, correct.

Q Do you know on what basis he would assign them to this or that doctor?

A I think it was based primarily on the availability of a particular doctor.

Q Do you know on what basis he would assign patients, not necessaily emergency patients but as to prosthetics and crown and bridge?

A Who are you referring to now?

Q Dr. Brunetto?

A Dr. Brunetto, yes, they will have a appointment for consultation with Dr. Brunetto.

He would then go over the X-rays and clinically examine the patient, decide whether they need a removal of a bridge, a denture, teeth had to be extracted or partial or fixed bridge or whatever and then he would chart it out on the patient's chart.

Q Would he then assign it to a particular doctor?

A As a rule, yes.

Q Do you know on what basis he would make that assignment?

A No, I don't think it was any basis.

Again I think it was on availability.

Q Have you ever disagreed with Dr. Brunetto's diagnosis?

A I have disagreed with -- may I augment that a little bit?

I have disagreed sometimes with Dr. Brunetto's and Dr. Krauss' diagnosis.

Q What have you done when you disagreed with Dr. Brunetto's diagnosis?

A Well, when I disagreed with him I would go to Dr. Krauss and tell him that -- didn't happen very often, very rarely, and tell him that I disagreed with the diagnosis.

Q What would Dr, Krauss do at those times?

A One time he said, "Well look, if he disagrees, tell him to shove it up his ass."

Those were his words.

Q What happened when you disagreed with Dr. Krauss' diagnosis?

A That was in disagreement with Dr. Krauss' diagnosis.

Q Didn't you say that at times --

A I said, but if I disagreed, you just couldn't disagree.

His word was final.

Q Were you present at a meeting in October, 1975 with Dr. Krauss in which pay raises were discussed?

A I was there.

I think it was September.

I went in to Dr. Krauss personally.

There was no group.

I was there, asked him about a raise.

He said there would be a meeting of the boys upsta October 20th.

I remember that date because when I got back to my room I had a calendar in my room and I had to look up October 20th and it came out on a Sunday and I know that was a lot of hookum so I never went back to question Dr. Kress again about that because I knew it was useless to get anywhere about raises.

Q There was no meeting in October?

A As far as I know there was no meeting.

Of course, that came out on a Sunday as I said, October 20th was a Sunday.

Q Were you in the lounge at any time in the latter part of 1975 when Dr. Krauss said anything about pay raises or the condition of the Pension Committee?

A Well, as I said, going back to the question, he didn't tell me anything about financial conditions when I went in in September.

He just said there would be a meeting in October and he would see what he would do about a raise.

Those were the words that he used at that time.

As far as the lounge is concerned I don't recall any statements.

Q Did there come a time when Dr. Krauss ever told you that the Pension Committee was in dire financial straits?

A Well, he said there were a number of men out of work.

I don't know if it was two thousand something, I don't recall the exact figure, and that raises might be hard to come by at this time.

Q When did he say this?

A Back --

Q Was it before the telegram of March 15, 1976?

A It is possible but I'm not sure.

I can't really remember.

Q Do you get a raise yearly yourself?

A Well, the last raise I got I believe was January 1975.

Q And you came in and asked Dr. Krauss for a raise in September, '76?

A Right.

Q After that you made no further inquiry?

A Not September, '76, '75.

Q Excuse me, after that you made no further inquiry at all as to raises?

A No, not, because -- because of the fact I felt I was just getting a ride because when he said there was going to be a meeting October 20th and I know they don't meet on Sunday, I said, again I repeated it, I knew this was a ploy on Dr. Krauss' part.

Q And this one incident led to your not raising it again; is that what you are saying?

A Yes, because -- well, as I said before, I had good relations with Dr. Krauss and if there was a raise and if he felt that he was going to give me a raise he would give me a raise without telling me that there would be a meeting on October 20th on a Sunday, but he did find means to get other men, well, one man in particular, raises and annuities and what not, despite the fact that other men were as competent or more competent than he was and this was based, in my opinion, purely on personal grounds.

Q Which man got a raise?

A Dr. Corliss.

Q When did he get a raise?

A I don't know when the raise was and at the time when he got his annuity the statement was made by him he couldn't get annuities but then at a meeting, a general meeting prior to our vacation period, must have been May, June, I don't remember.

Q Of 1975?

A I don't remember.

It wasn't '76, it was '75.

He announced he had given a man an annuity and as it turned out it was Dr. Corliss.

Q So Dr. Corliss' raise or annuity happened before May of 1975; is that correct?

A Possibly, yes, I'm not sure.

Q Do you know if any other doctor received a raise after September of 1975?

A September?

Q That is the time --

A I don't know that, no.

Q Did you ever make an inquiry as to that?

A No, I did not.

Q In that regard?

A No, I did not.

JUDGE ROSENBERG: At least you did not, did you?

THE WITNESS: I did not, no, sir.

MR. EDELMAN: I am going to object to further questions along this line.

It is really not the kind of testimony that this witness is capable of testifying to on cross.

Whether he knows or not is immaterial.

The Respondent has --

JUDGE ROSENBERG: It is highly material.

MR. EDELMAN. The Respondent, your Honor, has the records and he can put it in on his own case and I think that should be where it best be placed.

JUDGE ROSENBERG: Overruled.

Q (By Mr. Geller) You say that there did come a time when Dr. Krauss did tell you that men were out of work and that less money was available?

A He didn't say about less money available.

He said there is a lot -- there was less money -- I'm sorry, he did say there was less money coming in from the employers because there were a couple of thousand men unemployed.

Q Am I repeating your testimony correctly, and if I am not please tell me, that you aren't sure but it may have been before March of 1976?

A I'm not sure.

I can't remember the date, honestly, and --

Q And you can't remember the year either; is that correct?

A It was '76, definitely.

It was '76.

It was not '75.

Q It was between January and March?

A Somewhere in that period, yes, I would say so.

Q Was this in the course of the meeting with other dentists as well as you or just with you?

A It was a personal thing with me.

I don't know whether anybody -- I didn't see anybody that was in the room with me at the time.

Q Did anyone ask you to approach him as to inquire about raises?

A No, they never did.

Q Was the fact that you did not receive a raise in the latter part of '75 or '76, did that lead you to call the Teamsters?

MR. EDELMAN: That is objectionable.

The motive is immaterial.

Q (By Mr. Geller) Were you financially --

JUDGE ROSENBERG: Wait a minute, he made an objection.

Any response to it?

MR. GELLER: I will rephrase the question.

Q (By Mr. Geller) Were you dissatisfied in the early part of 1976, were you dissatisfied with the financial arrangements between yourself and the Dental Department?

A It had nothing to do with my calling in the Teamsters.

MR. EDELMAN: I am going to object to any questions.

THE WITNESS: Not personally, you see.

MR. EDELMAN: Your Honor, I am going to object to any questions regarding motivation as not being relevant.

MR. GELLER: It is relevant to credibility at this point.

JUDGE ROSENBERG: I overrule that.

What was the reason?

THE WITNESS: May I have the question again, please?

MR. GELLER: Well, the Judge is asking you.

JUDGE ROSENBERG: What was the reason why you contacted the Teamsters or any labor organization?

THE WITNESS: I have to go back a little bit.

I previously was on two grievance committees with the men on the staff and I felt personally and the men involved in the dental clinic that we were not being treated fairly.

Some men were getting raises, bigger raises, and others getting less raises.

They were hiring new men at larger starting salaries than men that were there three years, four years, five years, trying to get men in because they were desperate to get men in.

I did this thing because of many factors.

The harassment that went on among -- with the men with Dr. Krauss, the insultings that the men took from Dr. Krauss in front of patients, the general attitude of him towards his men who I felt he treated as non-professional people.

I felt that Dr. Krauss felt we were all stupid people.

I felt that he thought we were nincompoops and that because we couldn't answer him back, he was the czar, Napoleon of the entire place and he had great powers there and he often told me that.

That is the only reason he took his job, was because he got everything he wanted, he could do everything he wanted in the Dental Department, so there was never, you could never question Dr. Krauss about anything.

His word was final.

He could insult you, you could walk in the room and he would say "Do you know what the hell you are doing," and things of this type.

This harassment was the most, to me the most vexatious thing that was involved.

JUDGE ROSENBERG: This harassment occur before March of '76?

THE WITNESS: This harassment -- well, it always existed but much more so.

It was accentuated after March to a great degree.

Q (By Mr. Geller) Now, you were on a grievance committee.

When were you first on the grievance committee?

A The first time?

Q Yes.

A Oh, I couldn't remember.

It was probably around 1972, but I couldn't be sure.

Q Were you part of a grievance committee that met with Dr. Krauss at the end of 1973 or early 1974?

Did you have a meeting with Dr. Krauss then?

A Yes, I was on two grievance committees, so which years they were I couldn't remember.

Q This particular grievance committee, was there one meeting with Dr. Krauss in which you took part in which pay matters were discussed, and specifically pay parity with the Medical Department?

A Yes.

Q Did you participate in that discussion at that time?

A Yes, I did.

Q You were concerned about pay raises then, weren't you?

A I sure was.

Q But in 1975, you simply discussed it once and then forgot about it?

A That is correct.

Very simply because, as I stated before, after I saw that ploy with Sunday, October 20th, that was enough.

I felt there was no point going ahead with it.

Q Did you ever hear any discussion in the lounge about any absent of pay raises?

A Among the men?

Q Yes.

A Well, everybody was complaining that they were not -- yes, many of the men complained there was no pay raises.

Q Was there any discussion at that times as to the financial condition of the Pension Committee?

A No, we didn't, no.

Q Then you have no knowledge, Dr. Goldberg, of any meeting in late 1973 between any group of dentists -- in 1975, that is, on or about September or October relative to pay raises?

A I can't remember, no, sir.

MR. GELLER: May I have one second?

Q Dr. Goldberg, do you recall at any time, and particularly I will direct your attention to any prior staff meeting, whether in '75 or '74, were you at the staff meetings in '75 and '74?

Were you in attendance, the general staff meetings in which Dr. Krauss would address the dentists?

A Why yes, we had so many I don't know which one.

He called us in the lounge constantly.

I don't know what you mean by staff meeting.

Q I am referring to meetings, just to refresh your recollection, in which they were recorded on tape these particular meetings.

A That I recall, yes.

Q Now, how many of these meetings were there in 1974, do you recall?

A If I recall, one.

Q What about '75?

A I don't remember.

I don't think there was one in '75.

I'm not sure.

Q Now, at these meetings did Dr. Krauss give instructions as to how the work should be performed?

A In '74, well --

Q Any --

A Every meeting.

His meetings were more or less in every staff meeting as I recall them, once a year meetings where the recordings took place.

He always strove, you know, to get the guys to perform to their utmost which they were doing anyway at all times.

Q He wouldn't just make general statements about how they should do good work, he would be more specific; isn't that so?

Would he go into details?

A No, he wouldn't.

He would say -- no, he would not go into details.

He would say well, the Operative Department, he would like a little more -- there were a couple of men dropped some fillings on their work.

Q Do you recall his ever mentioning or making a statement at any one of these staff meetings with words to this effect, if the restoration is no good don't cement it?

A That is correct.

Q Did he make it at the '74 staff meetings?

A I couldn't remember.

Q One of the staff meetings?

A I don't think it was made at the staff meeting.

I think it was made but I don't think it was at a staff meeting.

Q Do you know of any incidents involving Dr. Manford that occurred prior to the one which you testified to in late April, shortly before the closing?

A I couldn't, you would have to try to refresh my memory.

Q Was there an incident involving Dr. Manford that happened two or three weeks before the incident that you referred to involving a restoration that was cemented in?

It is possible that you do not know it, I am just asking you whether you know it?

A I don't recall.

It is not fresh in my memory at all.

Q Do you recall Dr. Krauss saying if the restoration is no good don't cement it?

A That I do recall but it was not at a staff meeting.

That I recall.

Q You do not recall it at a staff meeting?

A I do not recall it at a staff meeting.

It is possible.

Q Where do you recall it being said?

A I think it was at a very small informal group, something like that.

Q Was it uncommon for Dr. Krauss to make a statement like this, give a direction like this in one of these small group meetings, telling the men how --

A He said it perhaps once or twice in four years that I was there.

Q But did he give other directions of a similar nature professionally to dentists?

A No, no, first -- no, I don't think so.

I don't recall it.

Q That is the only medical dental direction he ever gave?

A I don't think Dr. Krauss put himself forward as an expert on all fields of dentistry that he could make what we should do or not do.

Q Did he tell you what to do or not to do such as not cementing in restorations?

A That is one thing I recall, yes.

Q And nothing else?

A He wanted good X-rays, he wanted good -- naturally he is the administrator, he wanted good fillings.

He wanted good this, but this was all.

I think I said in my testimony that he told me also, Mr. Geller, he said this was the best group of dentists he ever had and as far as he is concerned the best industrial group of dentists in the country, so if you were going to pick on picayune things you can pick on anything.

Nobody is infallible.

MR. GELLER: I don't have any further questions.

JUDGE ROSENBERG: Anything else?

MR. EDELMAN: No more redirect.

MR. GELLER: Your Honor, I would just ask that the record be kept open with regard to this witness, with regard to the possible introduction of further materials along the lines of the telephone directory.

I believe that is the subject of which your Honor can take judicial notice as to the --

JUDGE ROSENBERG: What real importance is it?

MR. GELLER: I don't think it is of any great importance except perhaps for credibility.

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JUDGE ROSENBERG: You may step down.

Now, I assume that the General Counsel rests?

MR. EDELMAN: I do, your Honor.

JUDGE ROSENBERG: We will take five minutes.

(A short recess was taken.)

JUDGE ROSENBERG: On the record.

Do you want to call your next witness?

MR. GELLER: Joseph D'Angelo.

Whereupon,

JOSEPH D'ANGELO

was called as a witness by and on behalf of the Respondent and, having been first duly sworn by Judge Rosenberg, was examined and testified as follows:

JUDGE ROSENBERG: Be seated and give your full name and address.

THE WITNESS: Joseph D'Angelo, 158-11 Jewel Avenue, Flushing 11363.

DIRECT EXAMINATION

Q (By Mr. Geller) Mr. D'Angelo, what is your position with the Pension Committee?

A I'm the Director of Administration.

Q How long have you held this position?

A Approximately six years.

Q What are your academic qualifications in the area of accounting?

A Major in Accounting.

I'm a Certified Public Accountant.

Q Would you describe your functions as Director of Administration of the Pension Committee?

A As Director of Administration I have responsibility for the overall administration of all of the benefits contained within the Pension Committee, consisting of pensions, Major Medical Hospitalization, surgical, serious injury, pension premiums, Medical Department, Dental Department, Convalescent Home that the Pension Committee operates in Southampton and the administration of all of the funds that come in, the payment of benefits.

That is generally it.

Q Will you describe the relationship between the pension account and the welfare account of the Pension Committee?

A Yes, the pension account, what we call the regular account, is the account that is set aside for the payment of welfare benefits.

The pension account is the moneys that come in that is set aside strictly for the payment of pensions.

Under the provisions of the trust indenture, the moneys set aside for pensions cannot at any time be taken out and used for any other purpose.

Q Do you know whether the reverse is true or the welfare funds could be solicited for pension purposes, and whether it has ever been done?

A Yes, the welfare funds can be moved and shipped into the pension portion and it was done once -- on two occasions to my knowledge, in 1965 and 1966 where, based on an acturial report which we had received, that it was necessary to transfer from the welfare account to the pension account $15 million and that was done in two stages.

Q Is it part of your job to attend trustees' meeting of the Pension Committee?

A Yes, I attend every trustee meeting.

Q Have you done so since you first took over the job?

A I have done so for the last 11 years.

Q Did there come a time in October 1975 that you attended the Trustees' meeting?

A Yes, sir.

Q How often are these Trustees' meetings held?

A They are held every other month, six meetings per year.

Q On what day in the month?

A They are held on the fourth Wednesday of every even month.

Q Can you tell us, did there come a time in the October meeting that you presented a financial report?

A Yes, sir.

The financial report would either be presented by myself or by the comptroller with all comments and questio directed at me for answer.

Q What is your role in the compilation of the financial reports presented either by yourself or the comptroller?

A Well, they would be prepared directly by the comptroller under my direct supervision.

Prior to the report being prepared for submission at the meeting, I do review all of the reports and I do consult with him or he consults with me on a regular basis regarding any information that is contained within those reports.

Q Now, you say at the October meeting.

Who gave the report?

A I believe Mr. Kaufman, the comptroller.

Q Did there come a time when you saw this report?

A Yes, prior to the meeting, definitely prior to the meeting and at the meeting and in the presentation.

Q How were they distributed?

A Each person attending the meeting has a copy of the report.

Q I show you --

JUDGE ROSENBERG: This is in October?

MR. GELLER: October 7th.

Q (By Mr. Geller) I show you a copy of this report and ask you if you can recognize it?

A Yes, this is the report that was submitted, our fiscal year, if I may, our fiscal year is October 1 to September 30th, so that at the October meeting we would have been presenting the financial report through September 30th which was a 12-month report, and this is that portion of the financial report that deals with the welfare account.

Q And not the pension account?

A And not the pension account.

Q This is a 12-month report?

A Yes.

Q Usually how many months are covered by a financial report given at a Trustees' meeting?

A Well, it would be starting October 1st, it would be a cumulative report up to a maximum of 12.

At the December meeting we would present the financial statement for the months of October and November, so it would be a two, four, six.

Q Can you tell us how this was presented?

Was it just presented physically or was it read, commented upon?

Would you describe the process, particularly as applied to this particular report?

A Yes, the financial statement is read.

Not in every -- not item by item but the highlights, the total income, the total expenses, total assets would be, total current assets, total investments.

It is read and each person attending the meeting would have a copy of the report and they would follow along and then raise any questions regarding it.

Also, in the presentation of the report it is normal for us to make any comments pertaining to the report that we feel, we try and anticipate any questions that may arise and try to answer them with comments before the questions come about.

Q Would you tell us what goes into these reports and with particular emphasis on the accounting basis of the report?

A Yes.

Well, this would be -- these are prepared -- what goes into them is basically all of the items of income and expenses pertaining to anyone of the benefits or expenses that I enumerated before.

Q As to the accounting basis, how is this compiled?

A This is compiled on a cash basis of accounting with very minor -- with a very minor attempt at establishing some accrual items.

JUDGE ROSENBERG: Do you intend to put that document into evidence?

MR. GELLER: Yes.

JUDGE ROSENBERG: Why don't you have it marked first and then you can take a look at it while you are interrogating this witness.

MR. GELLER: We will have this marked for identification as Respondents' 2.

JUDGE ROSENBERG: Respondents' 2.

(The document above-referred to was marked Respondents' Exhibit No. 2 for identification.)

Q (By Mr. Geller) You were telling us about the accounting basis.

What is the accounting basis, cash accrual?

A It is basically a cash -- it is basically a cash basis with an attempt to establish some accrual items.

As can be understood these statements are being prepared to submit to an October meeting at a relatively short period of time after the close of the fiscal period, so that it is really impossible to establish real accruals or total accruals.

Q Would you describe the accuracy of this statement in accounting terms?

A Well, in accounting terms it is accurate as prepared on a cash basis but not -- it would not conform to a full fledged audited financial statement that is prepared on an accrual basis.

Q How was this particular report presented at the October meeting?

Line by line, item by item or some other fashion?

A No, major, the highlights are read.

Not line by line, but --

Q Do you recall any discussion, any questions, any answers, any discussions pertaining to this financial report at the October Trustees' meeting?

A Yes, there was some discussion.

There was discussion since this report indicates that there was a net decrease of approximately $1-1/2 million for the 12-months in the fund balance, so that based on the operations for 12 months we had expended $1-1/2 million more than we had taken in and there was discussion regarding that and the projection as to, if this trend -- if it was our anticipation that this trend would continue.

Q Well, hold your thoughts and tell me how you derived the information that there was approximately $1-1/2 million deficit for the '74-'75 years?

A Well, we started with the fund balance of $19,083,000.

Q And you arereferring to the second page of the two-page report?

A The second page of the report, the statement of changes in fund balance.

Q You refer to the top line which says what?

A Which is fund balance October 1, 1974, which is the beginning of the fiscal period.

Q How did you determine from this statement?

A Well, very basically, we end up the financial figure on that as fund balance, September 30th which is

$17,553,000 or approximately $1-1/2 million less than we began the year with.

Q Now, you were telling us what reaction there was to this disclosure.

Please continue.

A Yes.

The Trustees did question whether or not it was our anticipation that this trend would continue and our response to that was that in all probability it would continue since the employment picture was, the unemployment was increasing and the basis of our income is a percentage of gross wages on the earnings of the men who are working, so as unemployment increases the amount contributed to the fund decreases.

Q Who gave this response to the question?

A I did.

Q Were there any other questions and answers that you can remember?

A Yes.

We also discussed that since September 30th was our fiscal period, that S. D. Leidesdorf, our independent accountants, would be coming in which they normally would come in some time in November, and begin their audit and they would prepare a more accurate financial report for the period of time which we would submit at a later meeting.

Q Did there come a time that you attended the meeting, a Trustees' meeting in December?

MR. EDELMAN: Excuse me, have you introduced this or --

MR. GELLER: Excuse me, I move that Respondents' Exhibit 2 be admitted.

JUDGE ROSENBERG: Any objection?

MR. EDELMAN: I would just like to ask one or two questions and probably I will have no objection.

VOIR DIRE EXAMINATION

Q (By Mr. Edelman) Mr. D'Angelo, I take it that the second page of the document marked as R-2, namely, the statement of changes in fund balance, and that is for a period of October 1st, 1974 to September 30, 1975, I take it that when this page is read against the Leidesdorf page any differences that exist, the accurate record would be the Leidesdorf report; is that correct?

A Yes, sir.

May I comment on that?

Q Yes.

A The Leidesdorf report would not be available though until some time substantially after the submission of this report.

When this report is presented it is stated to the

Trustees that this report was prepared without the closing entry -- without adjusting and closing entries.

Q So that the figures could be off by about how much on a percentage basis, if you can estimate?

A Well, in the past years they have not been off for any tremendous amount of money because we have been able to -- the basis of our being offset accruals that Leidesdor would pick up which we would not have access to and we don't attempt to do because it is an interim short-term report.

In this case the Leidesdorf report did demonstrate that in actuality this report was substantially off.

The picture was much -- the actual loss was substantially higher than indicated here.

Q Then accurate figures reflecting the actual condition of the fund would be reflected in the Leidesdorf report and these would be approximations, sometimes accurate and sometimes not so accurate?

A Yes, because these are prepared strictly on a cash basis.

One of the major items that is not contained in any of our interim reports, these are information reports, they are not held to be 100 percent accurate accountant's reports.

But one of the primary items that does not go into these reports would be outstanding claims.

If we take hospitalization claims as an indication, Leidesdorf would pick up all claims for which a member, his wife or his children, anyone covered was hospitalized, September 30th or prior.

Now, this claim may not have been filed with us until October or November.

We may not have paid it until two or three weeks after the claim came in, so that claim may not have been processed through until December.

They would have that information at the time of their preparation.

They would take that information and place it back within this fiscal period.

Q With respect to the fund balance, would you say that these reports may be off -- this is a year-end report -- would you say that they might be off anywhere from 10 to 30 percent?

A Well, this report, this report as it turned out I believe on a percentage basis, I didn't calculateit, but the Leidesdorf report indicated that instead of 1 million, that the fund balance was off some 900,000 which would be about 10 percent, I guess, 9 percent.

JUDGE ROSENBERG: In addition to that indicated there?

THE WITNESS: Yes, sir.

MR. GELLER: Yes, we intend to bring this out but I have no objection to this coming out now.

It is a bit out of order.

JUDGE ROSENBERG: What?

MR. GELLER: The development that it was off by $900,000.

MR. EDELMAN: I have no objection to the document going in.

I just wanted it to be noted that when matched against the Leidesdorf report that the Leidesdorf report represents the accurate picture and this represents the best available approximation that the Local was able to render at that time, all the funds.

JUDGE ROSENBERG: Still at the same time the Leidesdorf report was more severe.

MR. EDELMAN: That may be true.

MR. GELLER: By about $1 million.

MR. EDELMAN: Possible.

THE WITNESS: Yes.

JUDGE ROSENBERG: Well, that is his testimony.

MR. EDELMAN: In connection with this one I don't know that is true in every case.

Whatever is the truth, I am willing to let that fall where it may.

JUDGE ROSENBERG: How will I ever know?

MR. EDELMAN: My only question is at this stage in connection --

JUDGE ROSENBERG: You have no objection to this exhibit as implemented by the testimony of this witness?

MR. EDELMAN: I have no objection to it.

JUDGE ROSENBERG: Excuse me, in addition to the loss reflected on Page 2 of Respondents' No. 2 for identification, that the otherreport indicates at least or approximately $900,000 more of a loss to the fund.

MR. EDELMAN: I am not going to admit that that is what the other report indicates on the basis of testimony.

JUDGE ROSENBERG: Up to this point this is this witness' uncontradicted testimony.

MR. EDELMAN: Your Honor, I am merely asking questions to find out whether or not this report represents as accurate a report as the Leidesdorf report or not.

That is all I'm trying to find out, so that when I stated I have no objection to the document going in, I want it understood that the Leidesdorf report is the accurate document for the particular --

JUDGE ROSENBERG: As to how accurate it is because I don't know what it is.

MR. EDELMAN: I have just asked the witness, your Honor, which is the more accurate report, the Leidesdorf report or this report.

JUDGE ROSENBERG: Maybe you just don't understand me.

It may well be the most accurate report, the Leidesdorf, is that what they call it?

THE WITNESS: Leidesdorf.

JUDGE ROSENBERG: And yet I have never seen it so I don't know in what degree it differs from this document that has been offered.

MR. EDELMAN: I see.

The witness testifies --

JUDGE ROSENBERG: What good is that going to do me?

MR. EDELMAN: I am trying to decide, your Honor, whether or not I have an objection to a document going in.

The witness testifies that he has a document that represents certain figures from October, '74 to September, '75, and the document has certain figures contained therein.

He also testifies there exists another document that shows similar figures for the same period of time, although he says the other document may have different figures.

I am merely trying to ascertain from the witness which document he claims to be the more accurate document.

JUDGE ROSENBERG: Again, suppose as he has indicated it is the Leidesdorf one that is more accurate, how does that help me?

MR. EDELMAN: I don't know if it helps you at all, your Honor.

All I'm trying to do in my own mind is decide whether or not I want to object to a document that is being offered.

JUDGE ROSENBERG: Have you made up your mind yet?

MR. EDELMAN: Yes, I have no objection to the document being offered based on the testimony of the witness.

JUDGE ROSENBERG: All right, it is received.

(The document above-referred to heretofore marked Respondents' Exhibit No. 2, was received in evidence.)

CONTINUED DIRECT EXAMINATION

Q (By Mr. Geller) Did there come a time in December, 1975 that you attended a Trustees' meeting?

A Yes, sir.

Q Was a financial report presented then?

A Yes.

MR. EDELMAN: Excuse me, what Trustees' meeting were you talking about?

MR. GELLER: The Pension Trust.

JUDGE ROSENBERG: This one is in December?

MR. GELLER: Yes, December.

MR. EDELMAN: You said September, excuse me.

MR. GELLER: If I made a mistake I am referring to the December Trustees' meeting of the Pension Committee of the Joint Industry Board.

Q (By Mr. Geller) You attended a Trustees' meeting and a financial report was presented?

A Yes, sir.

Q I show you these papers and ask you whether you can identify them?

A Yes, these are similar to the financial statements that we had before.

These are the ones that -- the financial statement for October, '75 to November 30th, '75, a two-month period, and these statements were presented at the December meeting.

I might add that at the bottom of each statement it is indicated that these figures have been prepared without the S. D. Leidesdorf & Company closing entries for the year ended 1975.

MR. GELLER: May I have these copies marked for identification, please.

(The documents above-referred to were marked Respondents' Exhibit No. 3 for identification.)

Q (By Mr. Geller) Would you tell us what was presented orally and who presented it with respect to this particular financial report of the December meeting?

A I believe at the December meeting I presented this statement myself and again, there were a series of questions and discussion on the statement because this two-month period indicates that the loss in the fund balance is about three hundred -- almost $400,000 for a two-month period.

Q Have you testified as to what the loss was according to the financial report presented at the October meeting, what the annual loss was?

A Yes, it was for the 12-month period, it was $1-1/2 million as shown on our interim statement, and for the two months, October and November of 1975, the loss was almost $400,000, and projecting this over an annual basis that would indicate a loss of approximately $2-1/2 million, and there was discussion that this projecting of the $400,000 over the 12-month period would indicate that the loss would be substantially higher in the year, fiscal '76 than it was in fiscal '75.

Q Do you recall with any greater specificity what the discussion was?

A Well, there was some discussion at that time regarding a report that had been made at the October meeting concerning a report that was made by Mr. Robert Collins of our office regarding a survey that he had made indicating that many of the building trades in New York City were facing the same serious problem, that the economic conditions in the City have affected the health and welfare funds and pension funds so dramatically that many of the building trades were in the process of reducing their benefit structure regarding the possibility of continuing the same benefit level.

Q May I interrupt you, Mr. D'Angelo?

Are you saying you neglected telling us something that happened at the October meeting?

A Yes.

Well, this discussion --

Q Would you elaborate on it now out of turn?

What happened at the October meeting?

A Mr.Robert Collins, after the presentation of the financial report, Mr. Collins presented a report on a survey that he had made regarding the building trades and the continuity of them paying benefits, since continuing to pay benefits at that same benefit level, since every building trade was being hit with the same severe unemployment problems as was the electrical industry.

Q Who is Robert Collins?

A He is the Director of Pensions for the Pension Committee.

Q Was his report in writing?

A He had a written memorandum that he had referred to as he was making his report.

Q Was this memorandum distributed among the Trustees?

A No, it wasn't distributed among all of the Trustees, it was distributed to some of us.

Some of us didn't have the memorandum.

Q Which meeting are we talking about now?

A That was at the October meeting and I mentioned in this regard that a further discussion that took place at the December meeting, referring back to Mr. Collins' report.

Q Before we get into the December meeting, even if we are out of turn, did Mr. Collins state how his report came to be made?

A Yes, he was requested to make that report by the Chairman of the Joint Industry Board.

Q How do you know that?

A Because Mr. Collins, again, is the Director of the Department that comes under my direct supervision and I spoke to the Chairman and Mr. Collins and was made aware that this survey was being conducted.

Q Bringing us back into the December meeting, you say there was conversation about that Collins Report?

A Yes.

Q Would you tell us about that?

A Well, there was discussion regarding the question that Mr. Collins had reported that many of the trades were reviewing the possibility of maintaining the same benefit levels and could we, could we maintain our same benefit levels with the deficits that were starting to show quite dramatically.

Q Who asked that question?

A Specifically I don't recall, but it was one of the Employer Trustees.

Q Was there any answer given to it?

To whom was it addressed, rather?

A I don't believe the question was addressed to anyone specifically.

I think it was just a question that was placed for discussion and the answer was given by -- the question was responded to by the Chairman of the Joint Industry Board who indicated that he had hoped we would be able to maintain our benefit levels, and he had, in return, reported at that time on a mailing that he had sent out to all of the participants of the fund in letter form, I believe, indicating that we had hoped to be able to maintain eligibility and maintain our benefits, even though we were in a very tight economic condition at this time.

Q Are there any other meetings of Trustees of the Pension Committee other than the meetings that you have discussed in October and December?

A Yes, on the first Monday of each month in which there is a meeting there is a Subcommittee meeting.

Q Do you attend these meetings?

A Yes, I do.

Q What is the function of the Subcommittee?

A The purpose of the Subcommittee is to review any particular questions that may regard -- as an example, any disability pension applications that have to be -- that will be submitted to the full meeting will be reviewed at the Subcommittee meeting along with all questions of eligibility for benefits for any of the benefits contained within this trust.

Q Do you recall any discussion as to benefits, benefit levels or costs of benefits at either the October or December Subcommittee meetings and, if so, at which?

A Yes, I believe it was at the December Subcommittee meeting that there was a discussion on maintaining the eligibility.

It has been our practice in our funds that even though a man is unemployed, if he is available for employment that he will not be penalized by the loss of any benefits, even though he was not able to be employed.

This historically has been the position that our industry has taken, and there was quite a bit of discussion regarding continuing that policy, because we were running into a period of extended unemployment where men would be out of work for four, five, six or eight months in some parts of the industry, and whether or not we were economically able to continue benefits when we had a great deal of men unemployed for a great length of time.

Q At which meeting did this discussion take place?

A I believe it was the December, early December, the December 7th Committee meeting.

Normally they're held the first Monday.

Q Was there any decision made as to continuing benefits while unemployment continued?

Was there any decision made at this Subcommittee meeting?

A Yes, there was a decision that we would continue to maintain, we would continue to maintain, we would continue to maintain the eligibility for men even though -- for them and their families -- even though they were unemployed for severe lengths of time, but that at future meetings this would have to be reviewed.

Q Do you know whether this same subject came up at other Board meetings, not necessarily the Pension Committee?

A Yes.

Well, I guess it was early in '76, January, February, I'm not sure, the Vacation Committee would normally --

Q May I direct your attention elsewhere?

Are you aware of a Joint Industry Board meeting, the Trustees of the Joint Industry Board, not the Trustees of the Pension Committee, the Trustees of the Joint Industry Board meeting some time early in December of 1975 when this topic came up?

A Well, the Joint Board, the Joint Industry Board meets monthly and they meet the second Wednesday of every month, and there was a Joint Board meeting in December.

Q Were you in attendance?

A Yes, I was.

Q Now, what was discussed there relative to continuing benefits to the unemployed?

A Well, there was discussion similar to what I had described at the Pension Subcommittee meeting and the Chairman of the Joint Industry Board had indicated that it was the position of the industry at that time to maintain the same benefits for those people, whether they were unemployed or employed, and not to make any changes at that time.

Q I show you a piece of paper and ask whether you can identify it?

MR. GELLER: While the witness is perusing the paper --

JUDGE ROSENBERG: Before you go on, what is Number 4 again?

MR. GELLER: It purports to be -- well, the witness --

JUDGE ROSENBERG: For the purpose of identification. a letter --

MR. GELLER: A letter from the Chairman of the Joint Industry Board to all members of the Local.

THE WITNESS: All participants.

MR. GELLER: All participants.

JUDGE ROSENBERG: Dated December 15, 1975.

MR. GELLER: Yes.

I'm requesting that letter be marked.

JUDGE ROSENBERG: That will be Respondent's Exh'bit 4.

(The document above-referred to was marked Respondents' Exhibit No. 4 for identification.)

JUDGE ROSENBERG: Respondent's Exhibit No. 3 has been identified and not offered.

Do you intend to offer it?

MR. GELLER: Yes, your Honor, I now offer it in evidence.

JUDGE ROSENBERG: It is received.

(The document above-referred to heretofore marked Respondents' Exhibit No. 3, was received in evidence.)

Q (By Mr. Geller) Would you tell us what this piece of paper represents?

A Yes, this is a letter that was sent to all participants of the various funds in which a reiterated position taken at the Joint Board meeting --

Q You needn't go into into the contents of it.

It will speak for itself.

JUDGE ROSENBERG: But you say this was a letter from whom to whom?

THE WITNESS: From the Chairman of the Joint Industry Board mailed to all participants of all of the funds.

Q (By Mr. Geller) How did this particular copy, this copy, this copy not necessarily that I showed you but an identical copy, how did it come to your attention?

A Well, I get any mailing that goes out or any communications that go out, again, since we are the administrative office and that would go through our office.

We would do the actual mailing or make arrangements to do the mailing.

MR. GELLER: I offer Respondents' Exhibit 4 into evidence.

MR. EDELMAN: No objection.

JUDGE ROSENBERG: It is received.

(The document above-referred to heretofore marked Respondents' Exhibit No. 4, was received in evidence.)

Q (By Mr. Geller) Now, did there come a time in February of 1976 that you attended a Trustees meeting of the Pension Committee of the Joint Industry Board?

A Yes, sir.

Q Was a financial report presented at that meeting?

A There were two financial reports presented at that meeting.

One would be our normal interim financial report which would be similar to the other two that we spoke about, and the other one would be the actual S. D. Leidesdorf certified financial statement.

Q Which was presented first?

A I really don't recall which order they were presented in.

Q Who presented the S. D. Leidesdorf report?

A I did.

Q Did you explain it?

A Yes.

Q I show you a copy or a batch of papers and ask if you can identify that?

JUDGE ROSENBERG: For the benefit of the record, this purports to be what, Mr. Geller?

MR. GELLER: A copy of the S. D. Leidesdorf report for the period October 1, '74 through September 30, 1975.

It is a report that also conveys information as to the financial standing of the Pension Committee at the end of 1974.

I will have them marked as Respondents' Exhibit No. 5.

(The documents above-referred to were marked Respondents' Exhibit No. 5 for identification.)

MR. EDELMAN: May I ask some questions on voir dire?

JUDGE ROSENBERG: Yes.

VOIR DIRE EXAMINATION

Q (By Mr. Edelman) Mr. D'Angelo, the S. D. Leidesdorf report consists of a title sheet, accountant's report dated December 16, a statement of assets, a statement of changes, notes to financial statements, Page 1, notes to financial statements which is an accounting type document and Page 2, pension, hospitalization benefit plan, Page 3, which is also part of the notes to financial statements, a letter dated September 16, 1975 with S. D. Leidesdorf & Company letterhead, Schedule 1, Schedule 2, Schedule 3 which are various expense schedules.

I ask you, is that the sum total of the S. D. Leidesdorf report that you received?

A Yes.

Q And all those documents were prepared by S. D. Leidesdorf & Company?

A Yes, sir.

MR. EDELMAN: I have no further questions, nor do I object to the document.

JUDGE ROSENBERG: You say you have no objection to the document?

MR. EDELMAN: None.

JUDGE ROSENBERG: All right, it is received.

(The documents above-referred to heretofore marked Respondents' Exhibit No. 5, was received in evidence.)

CONTINUED DIRECT EXAMINATION

Q (By Mr. Geller) What did you report on in connection with this report?

A Well, the initial matter that I would have reported on, that I did report on was the --

JUDGE ROSENBERG: Where did you report this?

THE WITNESS: This was at the February meeting.

JUDGE ROSENBERG: February, 1976?

THE WITNESS: 1976.

JUDGE ROSENBERG: Continue.

THE WITNESS: Refer to the date on the report as indicated -- their letter date is dated December 16 of 1975.

One of the questions in the past that has come up has always been regarding the dating of the accountant's reports.

That was dated December 16th, but yet not submitted until the February meeting, and the explanation for that would be that the date on the financial report is the date that the accountants have concluded their audit on the premises and have left.

So that information that may be developed subsequent to December 16th, the date they left, may not be contained within any financial report.

They are doing an audit through September 30th with all information available as of the date they leave and it is normal for us to receive this report some time in the beginning of February, somewhere around the 8th or 9th of February, so that the December -- the February meeting would be the first opportunity we would have to present this report.

I then reported on the fact that the welfare account, the reduction in the fund balance in the welfare account was actually $2,400,000, some $900,000 more than had been reported at the October meeting.

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JUDGE ROSENBERG: Less?

THE WITNESS: The deficit was reduced.

JUDGE ROSENBERG: Was greater?

THE WITNESS: Was greater.

The deficit was $900,000 more.

A (Continuing) We had reported a million and a half reduction and the reduction was actually $2,400,000.

Q Was there any comment made about that by the Trustees?

A Yes.

Well, there was -- and we explained the reason that I had basically -- basically the reason that I had explained to General Counsel before regarding accruals and payments being made substantially after the date of September 30th that do not become included in our interim but are included in their financial report.

There was discussion on the basis of $2,400,000 loss, that the current year which would be fiscal '76, the loss would be greater because the economic conditions just continued to worsen through the latter part of '75 and the beginning of '76, and that the administrators, the Chairman of the Joint Industry Board and myself were advised very seriously by the Trustees to monitor and to make any and all attempts to reduce the deficit.

Q Do you recall of anyone in particular who said that?

A Well, no.

The direction came from the Chairman of the Pension Committee but I do recall just in the form of a general comment that Mr. Harry Van Arsdale made that one, "We have to be very careful with the surpluses of the fund balance that we do have since it takes -- it took us 30 years," a comment to the effect that it took us 30 years to create, to develop the fund balance and it could be depleted in a matter of a few short years, and that the econimic conditions were such in New York City that it did not appear that we would be coming out of this to any great extent for quite a lengthy time.

Q What, if any, directions were given to whoever in this regard at the February Board meeting?

A Well, the direction specifically were to examine in all ways and methods of reducing the deficit, of saving money in any and all forms, administratively, through benefits and so forth.

Q To whom was this addressed?

A To the Chairman of the Joint Industry Board.

Q Did there come a time at that same meeting that another financial report was made?

A Yes, the interim financial report.

MR. GELLER: May I have marked for identification as Respondents' Exhibit 6 a document which purports to be the statement of assets, liabilities and fund balance through January 31st, 1976?

(The document above-referred to was marked Respondents' Exhibit No. 6 for identification.)

Q (By Mr. Geller) Now, I will show you Respondents' Exhibit 6 for identification and ask you if you can recognize it?

A Yes, this would be the interim -- this is the interm financial statement that was presented at the February meeting.

Q Are all of the figures on Respondents' Exhibit 6 as you just described it consistent with the figures on Respondents' 3 which I show you for examination?

A No, they are not.

Q What is not and tell us about that?

A The opening fund balance on this statement of changes in fund balance, on the November 30th statement was $17,445,000 and on the January 31st statement, the figure is $16,686,000 and that difference would be accounted for because at the time we prepared the January

31st we were in receipt of that time of closing and adjusting entries.

Also the comment at the bottom of the November 30th statement that these figures had been prepared without the closing entries is not there on the January report since the adjustments and closing entries had all been made at that time.

Q Now, did anyone present this report you just identified?

A Yes.

MR. EDELMAN: Are you going to introduce that? I have no objection to Respondents' Exhibit 6.

MR. GELLER: That is offered in evidence.

JUDGE ROSENBERG: It is received.

(The document above-referred to heretofore marked Respondents' Exhibit No. 6, was received in evidence.)

Q (By Mr. Geller) Was the report made in connection with the statement which has the date on it January 31st, 1976?

JUDGE ROSENBERG: Respondents' 6?

MR. GELLER: Respondents' 6.

A Yes, sir, that financial statement was also presented at that February meeting.

MR. GELLER: Off the record.

JUDGE ROSENBERG: Off the record.

(Discussion off the record.)

JUDGE ROSENBERG: On the record.

Q (By Mr. Geller) What was the nature of that report?

A Well, the report, if I recall -- I don't recall the figures exactly --

JUDGE ROSENBERG: This was in February?

THE WITNESS: This would be at the February meeting, yes, sir, that this statement did account for the adjustments made on the Leidesdorf statement in the opening fund balance and this report at this time did indicate that for the period October through January which is a four-month period, that the loss of the deficit at this time was over $1 million, $1,100,000, and again was running higher than it had indicated at the earlier meetings, and that this progression of this kind of loss would be -- would have such a negative effect on the fund that the continuation of these deficits -- there had to be some matters considered at that time.

Q May I rephrase it?

What does Respondents' Exhibit 6 indicate if it is possible to indicate anything about the rate of deficits in the months of December and January as compared to October and November, '75?

A Well, by the statement itself, it does not indicate anything but by comparing it to the prior statement, the November 30th statement, the deficit was increasing at a more rapid rate.

In other words, the deficit for the December, January period is greater than the October, November period.

Q Was there any Subcommittee meeting in this month in February, 1976?

A Yes.

Q Do you recall what happened there if anything relevant happened there?

A Well, again the question of continuing the eligibil of the participants even though they were unemployed.

We had looked at several specific cases regarding the continuing of benefit coverage and we did discuss at that time the continuation of benefits or the possible reduction of some types of benefits.

MR. GELLER: Your Honor, may I at this time inquire of General Counsel, to simplify matters, whether he would stipulate to the admission of the S. D. Leidesdorf reports for the years ending 1974, 1973, 1972 and 1971 for the purpose of comparison?

MR. EDELMAN: Yes.

MR. GELLER: With the most current report?

JUDGE ROSENBERG: Why don't you have them marked now and offer them without objection.

MR. GELLER: All right.

Would the Reporter mark for identification as Respondents' Exhibit 7, the S. D. Leidesdorf report for the year ending September 30, 1974.

(The document above-referred to was marked Respondents' Exhibit No. 7 for identification.)

MR. GELLER: Would the Reporter please mark as Respondents' Exhibit 8, the S. D. Leidesdorf report for the year ending September 30, 1973.

(The document above-referred to was marked Respondents' Exhibit No. 8 for identification.)

MR. GELLER: Would the Reporter please mark as Respondents' Exhibit 9, the S. D. Leidesdorf report for the year ending September 30, 1972.

(The document above-referred to was marked Respondents' Exhibit No. 9 for identification.)

MR. GELLER: Would the Reporter please mark as Respondents' Exhibit 10, the S. D. Leidesdorf report for the year ending 1971.

(The document above-referred to was marked Respondents' Exhibit No. 10 for identification.)

MR. GELLER: Your Honor, I now move to offer Respondents' Exhibits 7 through 10 into evidence.

JUDGE ROSENBERG: Without objection they are received.

(The documents above-referred to heretofore marked Respondents' Exhibits Nos. 7 through 10 inclusive were received in evidence.)

Q (By Mr. Miller) Mr. D'Angelo, I ask you to look at Respondents' Exhibit 7 in evidence and ask if you can determine from what the change in the fund balance was for the year ending September 30, 1974?

A Yes, for the year ended 1974 the fund balance increased approximately $3,200,000.

Q Mr. D'Angelo, after the February meeting what, if anything, did you do with respect to anything having to do with benefits, cost of benefits, amount of benefits?

Tell us what happened.

A Well, we met, I met with John Calascibetta who is my assistant, and the Chairman of the Joint Board and we started to evaluate any methods and means of saving money within the pension account, the regular -- the welfare portion of the regular account and we started to review each of the individual benefits on an individual basis to see where and how either reductions or adjustments to any of the benefits could be made that would affect substantial savings.

JUDGE ROSENBERG: How do you spell his last name?

THE WITNESS: C-a-l-a-s-c-i-b-e-t-t-a.

Q . What is his position?

A He is the assistant director of administration for the Pension Committee.

Q What form did those inquiries take?

Would you be more specific?

A Yes.

Well, on or about early March some times I know we met with the Chairman and we discussed the possibility of changing method of payment on the hospitalization benefit, approaching it from a point where we may be able -- we might be able to affect a substantial savings in hospitalization benefits.

Q Do you know steps, if any, were taken along the lines of inquiry directed toward that particular benefit and was it only the hospitalization benefit?

A Hospitalization, our comprehensive hospitalization, Major Medical and surgical benefits and steps were taken specifically to come up with a proposed change of procedure.

I have to go into some explanation of how the benefit is paid now.

Q Please do.

A The benefit now is paid directly to the member.

There is a per diem allowance for each day that he spends in the hospitalization and then the Major Medical is 100 percent of all medical bills with a $200 deductible and our payment is made directly to the member, and we started to explore the possibility -- basically that comprehensive plan amounts to a full payment plan.

Q What happens when the hospital sends its bill directly to you and says "We treated one of your members, we know he is covered.

"Pay us our bill."

A We disregard any -- we disregard any notification from the hospitalization.

We do not deal directly with any hospital.

We will only make payment directly to the member upon his filing an application with us.

If the member goes to a hospital and signs an assignment form, where he assigns the benefits to the hospital, we will not pay the hospital, we will pay the member directly.

They send the claim, he files a claim form with his bills signed by the doctor and an explanation of the nature of the illness.

Specifically one of the areas that we looked into is the possibility of going into an arrangement with hospitals, of making payments to them directly so that if they knew we would be responsible, se would be the responsible party for the payment of the bills, we might be able to negotiate more favorable hospital rates similar to the Blue Cross concept where Blue Cross has a special rate from each of the participating hospitals.

We had had some inquiries from hospitals where they would say to us, because they might have experienced some problem going out to collect balances, if we would become responsible and accept an assignment and that they would be in a position to consider giving us some kind of a lower rate than they give an individual.

A member now, when he goes into the hospital, basically goes into the hospital as an uninsured admittant and the hospital, in most of the cases, does require a deposit, a cash deposit at the time our member enters the hospital.

Q Who was assigned to this investigation?

A Mr. Calascibetta.

Q What other inquiries were made by way of cost cutting or benefit cutting other than this particular welfare benefit?

A I had discussed with Dr. Kriete who is the Director of the Medical Department, the possibility of effectively reducing costs there or eliminating the medical benefit.

JUDGE ROSENBERG: When you say that he is head of the Medical Department you mean of the fund?

THE WITNESS: Yes.

JUDGE ROSENBERG: Of the Pension --

Q Of the Pension Committee?

A Of the Pension Committee, Medical Department.

JUDGE ROSENBERG: Who is his counterpart in the dental clinic?

THE WITNESS: Dr. Krauss.

Q Now, what form did your inquiries take in respect to Dr. Kriete?

That is, what did you inquire about?

A I inquired as to the -- any and all means of reducing -- we were looking at the possibilities ranging from either reducing the benefit and when I say reducing the benefit, limiting the amount of work, the type of work that might be done, reducing it in the form of not extending the benefit to all dependents as we do, and then, ultimately, the possibility of eliminating it.

MR. EDELMAN: Eliminating what is this now?

MR. GELLER: The medical benefits.

MR. EDELMAN: This was a conversation with Dr. Kriete?

MR. GELLER: Yes.

MR. EDELMAN: On what day?

Q (By Mr. Geller) Do you recall when you had this conversation or conversations with Dr. Kriete?

A Some time in March.

I don't recall the date.

Q Were they only in March or were there any conversations with Dr. Kriete in April?

A Well, they started in March and they subsequently followed on.

Q Do you recall how man conversations, approximately?

A No.

Q Did you inquire into any other area of benefits?

A Yes, I made similar inquiries in discussions with Dr. Krauss.

Q What were the nature -- what was the substance, rather, what was the substance of your communications with Dr. Krauss?

What question did you ask him and what answers would you get from Dr. Krauss?

A Well, I had asked him specifically what the effect, what the effect would be on reducing or eliminating the dental benefit, what was the amount of supplies we had on hand, what would be the disposition of those supplies.

Q Was anything said with regard to the use by patients of the dental facilities, the frequency?

A Yes, during this period of time one of the -- I say this period of time, the period of unemployment that we had, the demands on the use of the Dental Department became much greater because men were out of work and were losing wages.

Apparently they were making much greater use of the dental facility than they had before.

What was happening, there was a great deal of congestion.

The appointments were spreading out, whereas once a patient had come in and began treatment we had tried to keep it on a 10-day treatment cycle.

Q Were you successful?

A Up until recently we had been fairly successful in maintaining that, with some exceptions in certain areas, endodonture --

DR. KRAUSS: Root canal work.

A (Continuing) Was always an area where there is a longer waiting period, but what was happening at this time was the length of time between patient visits that we were able to accommodate was growing.

I also had a conversation with Dr. Krauss, I don't recall the exact date, but it was some time after March 8th.

He had just hired a dentist, I don't recall which dentist, and I had called him and told him not to add any more overhead or add any more payroll on as of that date, and he explained to me that this dentist was really taken up time that had been lost by other dentists leaving some-time December, January or some time, I don't know.

But I did instruct him at that point not to hire any additional dentists.

Q After that February trustees' meeting and continuing until the shutdown in April, was this the extent of your inquiries into --

A No, we continued to make inquiries during this period of time, trying to establish in terms of which benefits were essential, most essential, what would be the impact of reducing benefits, what would be the impact of eliminating benefits.

Q During the month of March would you describe the cash flow position?

A Well, during the month of March --

Q Of the Pension Committee?

A During the month of March the cash flow position was very severe in a negative way.

We were running deficits, cash -- actual cash deficits in bank accounts that in my 11 years with the Pension Committee I had never experienced.

Q Could you estimate them, what they were?

A They were running into the -- over a couple of hundred thousand dollars and the impact of that was even greater because we had to -- we would process claims up to the point of drawing checks and then each day we would balance how much cash was available and how many

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cases we could draw checks on, just to meet the cash flow.

Q Let me clarify that, which collections were affected and what was the effect on the checks?

A Oh, hospitalization and Major Medical checks.

Q Are you saying they weren't paid during the month of March?

A Some where paid but they were withheld.

They were substantially withheld, whereas we may have paid them within two or three weeks after the claim came in, we were holding them four, five weeks passed that point until we had available cash to make payment.

Q Do you know if this had ever happened before?

A I know that it has never happened in the 11 years that I have been with the Pension Committee.

Q Now, going back a bit, before even March, can you tell us of any benefit that was affected in any way in the month of February, any benefit related to the Joint Industry Board, though not necessarily the Pension Committee meeting of the Joint Industry Board?

A Yes, the vacation benefit, the vacation period runs from April 1st of 1976 until March 31st of 1977.

There is an annual meeting some time in January or February of each year preceding the vacation period at which time the amount of vacation that will be paid for the year, that amount is determined.

Now, at the meeting, I believe some time in February, the vacation committee meeting, the benefit was reduced.

I believe it was cut from oh, about 8 percent.

It was reduced about 8 percent and that was the first time, to my knowledge that that had been done also.

Q How is the vacation fund funded generally?

A Very similar to the pension committee.

The vacation fund receives a percentage of the gross wages from the contributing employers.

Q What is your relationship with the vacation benefit fund?

A I'm the Director of Administration for the vacation fund also.

Q Do you know whether this fund had a surplus at the time that vacation benefits were reduced in February?

A Well, there had been a fund balance but again, we were running into a deficit position.

There is a fund balance in that account.

Q By fund balance you mean what we would call a surplus?

A Yes.

Q Do you know approximately how great it was?

A Offhand I'd say approximately ten, $12 million.

Q In these conversations with Dr. Krauss how often would you hold them during the months of March and April, 1976?

A I spoke to Dr. Krauss almost on a daily basis. Maybe not specifically about, you know, these matters, but ---

Q Did there come a time that Dr. Krauss made any inquiry of you why you were asking these things?

A Yes.

Q Do you recall how that arose and what you responded, if you responded at all?

A Not offhand.

Q Did there come any time at which you mentioned the possibility of closing to Dr. Krauss, the closing of the Dental Department?

A Well, in one of these conversations I did ask him as to his evaluation of the effect of closing, of eliminati the benefit.

Q What consideration, if any, was given during this period to plans such as phasing out either the Dental Department or the Medical Department or both?

A Well, we considered if the possibility came or -- of reducing, closing, eliminating the benefit, the effect of phasing out the benefit as opposed to what that situation would be as opposed to an immediate, an immediate discontinuance of the benefit.

Q When you say considering and when you respond in kind what form did the consideration take?

Are you telling us what was in your mind or something else that transpired?

A Well, I asked Dr. Kraus as to his evaluation of the -- what would be necessary for us to do if we decide at some point to phase out the Dental Department.

Q Do you recall what Dr. Krauss' answer was, or response?

A Yes, he did tell me at that time that it would be somewhere around two and a half months if he had stopped taking patients as of a given date, whatever that given date would be, would be approximately two and a half to three months.

Q I was going to get into this anyway, but I planned to ask you what form did this consideration take?

Was it spoken, was it mental?

Who participated in these considerations during these two months?

Do you understand the question?

A Not really.

Q Then let me rephrase it.

Were there any discussions on the subjects that you have been speaking of other than between you and Dr. Krauss?

A Yes, I had discussion with Mr. Calascibetta and with the Chairman of the Joint Industry Board.

Q During the discussions were the considerations that you have been mentioning raised?

A Yes, definitely.

Q How often did these discussions take place?

A Oh, periodically, once a week possibly.

Q But discussions with you and John Calascibetta was once a week?

A No, that is daily.

Our offices are right next door to each other.

Q Was it once a day?

A At least once a day I'd say if we didn't discuss it more.

Q Were you aware of what work Mr. Calascibetta was doing in compiling the report that you mentioned earlier?

A Yes, we discussed that also.

We would meet.

Mr. Calascibetta and I both get into the office somewhere between 7:30 and 7:45 every morning and we begin operations at 8:30 and every morning that we are both there, at least from somewhere around a quarter to 8:00 to 8:00 o'clock we sit and talk and discuss specific things, general things.

Q .Do you recall what was said at any one of these specific discussions between you and Mr. Calascibetta and between you and the Chairman?

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A Regarding --

Q These inquiries that you were making?

A Well, we discussed the inquiries that we were making with Dr. Krauss, Dr. Kriete and the work that Mr. Calascibetta was doing.

Q Can you tell us what factors were raised, if they were in fact raised as to the subject of phasing out the dental facilities?

A Yes, one of the factors raised was what would the effect be of phasing out the Dental Department.

We knew what the effect would be.

We felt we knew what the effect would be if we immediately closed it and we evaluated the possibility of what would the effect be if it was gradually reduced.

One of the considerations that we felt was that if we did phase it out it would be a very difficult thing for us to keep the department open, to continue treating, continue treating patients and yet the people that would call or come in to make appointments who were not under treatment would have to be turned away.

It would be a very difficult thing to get into where a man may be under treatment just in operative dentistry, getting some cavities filled and either his wife or one of the children find it necessary to -- some pain, to come into -- for him to bring them into the Dental Department and for us to say "Well, we can continu filling your teeth" or "We can continue treating you but we can't treat your children."

These were some of the considerations that had gone into effect that we were continuing.

We also were contemplating the continuing of people who were in prosthetics, who had had appliances in some form manufactured at the time, whether they were -- what the effect would be on continuing to be able to serv those people as opposed to people who were in operative dentistry.

Q Did you have any idea say in mid-April or late April of 1976 about how many people were in the course of being treated in prosthetics and crown and bridge and the other departments other than operative dentistry?

A Yes, we had an approximate idea of the number of people.

Q What number was present in your mind at that time?

A Somewhere 250 to 300 people.

Q Does that include the people in operative dentist

A No.

Q What did you base this figure on?

How did you derive this figure two hundred or so people?

A It was really an estimate that I had developed in my own mind.

It really was, and not a firm number, just an approximation that I had developed in my own mind based on monthly reports that Dr. Krauss supplied me with and along with general conversations with Dr. Krauss.

Q With regard to operative dentistry, can you can tell us what treatment is done in operative dentistry?

A Well, basically it is filling of teeth and I refer to that as your normal everyday dentistry, filling teeth, cleanings and so forth.

Q What was the policy of the Dental Department with regard to treatment of teeth with cavities before they were actually filled?

What work or, rather, may I phrase it this way, what work was done on teeth prior to filling them?

A To my knowledge, you know, and I'm not a dentist, to my knowledge the teeth would be prepared to be filled by drilling and whatever else.

Q And as Administrator, do you know when this preparation took place relative to the filling?

A Normally it took place at the time the filling was put in place.

I know it was generally the policy of the Dental

Department not to put temporary fillings in on a regular basis.

Q Do you know as an administrator what percentage of the teeth had temporary fillings in them?

A No, but I would say it would be very, you know, very small percentage.

It should have been a very small percentage.

Q What would have been the nature of those temporary fillings in terms of durability?

How long would they have lasted?

A I was told they could last up to six months.

I have no personal way of knowing this.

Q Who told you this?

A Dr. Krauss.

Q Now, as to the people in prosthetics -- let us take crown and bridge.

Would you describe how their teeth are prepared in order to be worked on?

MR. EDELMAN: Objection, he is not qualified to describe this.

He is not a dentist.

JUDGE ROSENBERG: If he knows.

MR. EDELMAN: Your Honor, I would object if he knows.

MR. GELLER: I will withdraw it.

Perhaps we can save time that way.

JUDGE ROSENBERG: It is conceivable that a layman may know.

MR. EDELMAN: He might have a dental degree for all I know.

JUDGE ROSENBERG: The question has been withdrawn.

Q (By Mr. Geller) Mr. D'Angelo, I am asking you this question in a very non-technical sense, but as an Administrator are you aware of how patients in crown and bridge are processed for treatment in the Dental Department?

A Yes.

Q What treatment is rendered to their teeth from a point to a point?

Do you have a general idea as to that?

A I really don't follow the question.

Q Let me put it another way, is it correct that teeth have to be filed down in the crown and bridge section to prepare them to receive certain --

A Yes.

Q (Continuing) -- certain crowns; is that correct?

MR. EDELMAN: I will have to object to this line.

This is really getting into the technical end of dentistry and there is no qualification, no evidence of any qualification of the witness to discuss this area.

JUDGE ROSENBERG: Have you ever had a crown put on

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one of your teeth?

MR. EDELMAN: I don't hardly have any cavities, much less any crown work.

JUDGE ROSENBERG: Well, I have and I can describe the same thing that he can.

But I am beginning to wonder though, aren't you overdoing this?

What is the relevancy of it?

MR. GELLER: Well, let me -- let me ask the question this way:

Q Were any of the patients in crown and bridge or prosthetics or root canal or any other section of the Dental Department other than operative dentistry which we already covered, in the middle of treatment as of April 29th or 30th of 1976?

MR. EDELMAN: I am going to object to this.

I think that Dr. Krauss, being the Director of the Clinic, would be far more qualified a witness to answer this type of question.

JUDGE ROSENBERG: Why don't you listen to his question first?

You might change your mind.

MR. EDELMAN: I thought he had concluded.

JUDGE ROSENBERG: Let him finish his question.

MR. EDELMAN: All right.

Q (By Mr. Geller) Were any of the patients in any of the departments other than operating dentistry, such as crown and bridge, prosthetics, root canal, in a condition that required immediate treatment?

MR. EDELMAN: I am going to object to the question on two grounds.

One, that Dr. Krauss is far more qualified to answer such question and is present two, that the witness is unqualified to answer such question.

JUDGE ROSENBERG: Mr. Geller, how would the witness know?

MR. GELLER: Well, I thought the witness might know it through knowing the staging of appointments and what is done at various stages, but I think I will get this in through Dr. Krauss.

JUDGE ROSENBERG: All right.

Q (By Mr. Geller) Now, was consideration given to any other factors in terms of whether to phase out the operation of the dental clinic or close it on a certain date?

A Well --

Q (Continuing) Relative -- I direct your attention, relative to any anticipation that you might have had as to the work being done in the department?

A Yes, one of the other factors that concerned us,

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one of the other factors that would have concerned us or that did concern, I know me specifically and we discussed -- we discussed it, was that the uncertainty, if we had announced that we were closing the department in a period of time, be it four weeks, six weeks, eight weeks, as to whether or not we would run into -- we feared that we would run into scheduling problems.

Many of the dentists or some of the dentists did depend on their work for the Pension Committee as a primary source of income and they would have to seek employment elsewhere, and during this period of time absenteeism may become a factor.

These were concerns too and -- that we considered and whether or not we would end up and when I say we, the Administrators would end up with a greater problem trying to explain this to the general membership over the period of eight or ten weeks that you were operating or in some stage of partial operation.

Q What considerations, if any, were given to the economic feasibility of phasing out the Dental Department?

A Well, economically, economically it didn't -- it really didn't make any economic sense to phase it out.

We were looking to save money as immediately as possible and that seemed to us to be the way to do it.

Q What consideration, if any, was given to treating patients who were left in some stage of treatment in the various sections?

A I don't think there was any question in our mind at the time that we would continue in some way to treat those patients who were in crown and bridge or prosthetics where appliances were in the processes of being manufactured.

I don't think at any time there was any question in our mind of continuing treating those patients.

Q You are talking about prosthetics only now?

A Prosthetics, crown and bridge, where an appliance was in the process of being manufactured.

As a matter of fact, I think it was -- I'm not sure if it was the Friday that we closed or the Saturday that we did instruct the lab to continue until completion whatever work he had in process in his lab at that time.

Q Do you know what has happened subsequently to those patients or part of those patients who were in treatment in prosthetics and crown and bridge?

A Shortly after the closing I met with Dr. Krauss and I asked him to go through each and every chart of every patient that was in either one of these departments and make an evaluation from a dental point of view as to the needs of each of the patients and the availability of the appliances that were completed, that were near completion and so forth, and after he had done this we started scheduling the patients and Dr. Krauss himself was to continue to completion the implanting or fitting of the appliances along with adjustments, and --

Q Do you know how many patients have been completed since the shutdown on April 29th?

A Not the exact number but I'd say it is over a 100 as of now.

JUDGE ROSENBERG: The work has been completed by whom?

THE WITNESS: Dr. Krauss.

JUDGE ROSENBERG: When was the decision made to close the clinic on April 30th?

THE WITNESS: The decision to close the clinic April 30th was made -- that actual decision as to when was April 29th.

MR. GELLER: Your Honor, I think I can lead up to that.

I got ahead of myself but I want to finish off that line.

Q (By Mr. Geller) Now, did there come a time in April that you attended a Trustees' meeting of the Board of Trustees of the Pension Committee?

A Yes.

Q Was a financial report presented then?

A An interim financial report, yes.

MR. GELLER: I ask that this be marked as Respondents' Exhibit 11 for identification.

It purports to be a statement of assets, liabilities and fund balance through March 31st, 1976.

(The document above-referred to was marked Respondents' Exhibit No. 11 for identification.)

MR. EDELMAN: No objection.

MR. GELLER: I just asked just for identification.

MR. EDELMAN: I have no objection.

I have seen it.

I assume you are going to offer it?

MR. GELLER: Yes.

JUDGE ROSENBERG: It has been offered and without objection it is received.

(The document above-referred to heretofore marked Respondents' Exhibit No. 11, was received in evidence.)

Q (By Mr. Geller) Will you tell us what the nature of the report was?

What the report was on April 28th, 1976?

Was that the date, April 28, 1976, of the meeting?

A Yes, April 28th was the fourth Wednesday and that was the meeting date.

This is a copy of the statement presented at that

April meeting which goes through March 31st, and what this report indicates is that the deficit for the six-month period had now reached the point of being almost $2-1/2 million as opposed to what we had had in earlier financial statements, and that the rate of progression of the deficit was increasing at a much more rapid rate.

In addition, on the front sheet the statement of assets, liabilities and fund balance, there is a cash deficit as shown on the statement of $340,000 which was just an indication of the cash flow problems that we were having at that time.

Q Would this indicate, when taken with other Respondents' Exhibits, what the operating deficit was for the months of February and March, 1976?

A Yes.

If one would subtract --

Q Would you tell us approximately how much the operating deficit was in February and March of '76?

A Well, the fund balance between January 31st of 1976 and March 31st, 1976 in this two-month period, the fund balance had been reduced by approximately $1,300,000.

That is in a two-month period.

Q What discussion or comments took place at the meeting relative to that and what results flowed from that?

A Well, at that meeting, as I stated, this progression was increasing at a very rapid rate and there was discussion that the primary responsibility and one of the essential responsibilities was to protect the pensions that had to be paid, had to be paid to the men who were on pension and the men who would be going on pension, and at that meeting the Chairman of the Joint Board was instructed to take actions necessary to protect the balance, the fund balances that remained.

At this rate we would run a $5 to $6 million deficit over the course of a 12-month period and if this continued over one or two years, that the fund balance that had been accumulated would be totally eliminated.

Q Was there any reference made to a particular act or law that was recent at the time?

A Yes, the Trustees -- there was discussion regarding the responsibility under ERISA, the Employee Retirement Income Security Act of 1974.

Q What was the concern there?

A That the primary responsibility was to protect the pensions.

In addition to that, this plan would have, pursuant to that Act -- there are certain parts of the Act that require plans to conform with and this plan would have to conform with those parts of the Act effective October 1, 1976.

So that at that time the demands, the added financial burdens of record keeping, of specific requirements that are necessary by the Employees Retirement Income Security Act would have to go into effect regarding this fund October 1, '76, and these --

JUDGE ROSENBERG: Excuse me, wouldn't that be true also of your medical or hospitalization plans as well as your --

THE WITNESS: Well, this is one plan, your Honor, this is one single plan that contains all of these benefits.

JUDGE ROSENBERG: I mean under this new statute you say, wouldn't the same rules apply to your other plans that you have, hospitalization, optical, that you had in October?

THE WITNESS: Yes.

They were concerned about the erosion on an annual basis of $5 million on this whole welfare plan which included the optical and the medical and the hospitalization.

JUDGE ROSENBERG: Let me ask you another question.

At the time that you and Dr. Krauss and members of the Committee were considering the problem of alleviating this cash deficit matter, one, were you aware that the Teamsters had started organizing the dental clinic?

THE WITNESS: I was aware on March 15th of that.

JUDGE ROSENBERG: Was the Committee also aware, say at the April 28th meeting not only was there an organizational campaign but a petition for an election had been filed?

THE WITNESS: I don't think any of them were aware that a petition had been filed.

Some of them may have been aware that there was an organizing campaign.

JUDGE ROSENBERG: But you were aware that a petition had been filed?

THE WITNESS: Yes, sir.

Q (By Mr. Geller) For the sake of clarity, would you state what the Optical Department is in relation to the Medical Department or other departments?

A Well, the Optical Department is not a separate department.

It is part, it is a benefit that is contained within the Medical Department.

It is actually part of the Medical Department.

It operates in the same physical space as the Medical Department.

JUDGE ROSENBERG: But it is funded separately?

THE WITNESS: No, sir.

JUDGE ROSENBERG: Well, I notice on these sheets that are introduced into evidence that there is a

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distinct figure given for both medical, dental and optical.

THE WITNESS: Yes, the Optical Department figure that is indicated here would be for the payment, a part of the optical benefit is the supplying of a pair of glasses and the expense for the Optical Department.

JUDGE ROSENBERG: Is it charged to medical?

THE WITNESS: No, the payment for glasses is included in this optical figure and the examining physician's salary, but all of the clerical functions are contained within the Medical Department since it is the same clerical staff and rent, administrative expenses are all contained within the Medical Department.

JUDGE ROSENBERG: Let me ask you, Mr. Geller, do you have much more of this witness?

MR. GELLER: Yes.

JUDGE ROSENBERG: Why don't we take this time to recess for lunch?

MR. EDELMAN: About how much more do you have?

MR. GELLER: I don't know.

JUDGE ROSENBERG: Off the record.

(Discussion off the record.)

JUDGE ROSENBERG: On the record.

Q (By Mr. Geller) Now about the ophthalmologists, are they in the Optical Department or the Medical

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Department?

A The opthalmologists are in the optical area but there is a great deal of referral within the -- between the optical area and the medical area, both ways.

An ophthalmologist may examine someone's eyes and then refer them for a physical or to a specific specialty.

Q A specialty within the Optical Department?

A Within medical, a medical specialty, a neurologist.

Q Who carries the ophthalmologists' salaries, the optical or medical?

A The ophthalmologists' salaries are included in this Optical Department expense item.

Q But there are referrals from the optical to the medical; is that correct?

A Constantly.

Q Physically where is the Optical Department located?

A Within the same, in the same area with the medical.

It is part of the medical.

Q There is a separation between the optical and medical?

A No, there is no separation whatsoever.

It is all within the Medical Department.

There is one reception counter, there is one desk, there is one set of files.

It is part --

Q That is only for the Medical Department though, including the Optical Department?

A The Medical and Optical Department.

Q We are not talking about the Dental?

A No, it is totally separate, across the hall.

MR. GELLER: I have nothing further on Optical.

JUDGE ROSENBERG: Why don't we recessat this time for lunch?

How about 1:30?

Is that time enough?

(Whereupon, at 12:50 o'clock P.M. a luncheon recess was taken.)

AFTERNOON SESSION

(1:30 o'clock P.M.)

JUDGE ROSENBERG: On the record.

I understand, Mr. Geller, that you have some stipulations to propose?

MR. GELLER: Yes.

I have shown Mr. Edelman a two-page exhibit dated October 15, 1975 which represents a memo to Armand D'Angelo, the Chairman of the Joint Industry Board from Robert R. Collins who is and was the Director of Pensions.

That was dated October 15, 1975.

Mr. Collins was asked to prepare a report along these lines which is a survey of other Unions and Union plans and joint Union-Employer plans within the New York Building Trades Industry, and the exhibit which we propose as Respondents' Exhibit 12 is the response to that request.

It was the memorandum sent to Mr. Armand D'Angelo and reported at the October meeting.

MR. EDELMAN: Stipulated to.

MR. GELLER: It has been further agreed --

JUDGE ROSENBERG: Are you stipulating to the receipt --

MR. EDELMAN: Yes.

JUDGE ROSENBERG: Of Number 12?

MR. EDELMAN: Yes.

JUDGE ROSENBERG: It is received.

(The document above-referred to was marked Respondents' Exhibit No. 12 and was received in eviden

MR. GELLER: Respondent further offers for stipulation by General Counsel that if permitted to testify, Mr. Collins, he would testify that he was subsequently requested by Mr. Armand D'Angelo to prepare a follow-up report for presentation at the April 26th meeting of the Board of Trustees of the Pension Committee, and that in response to that request Mr. Collins phoned the very same people whom he had contacted in preparing the October 15th report, and was unsuccessful in reaching any of them by reason of his being told that they were not available to come to the phone to him, to respond to his call for one reason or another.

JUDGE ROSENBERG: Do you so stipulate, Mr. Edelman?

MR. EDELMAN: I do.

JUDGE ROSENBERG: The stipulation is received.

MR. GELLER: Off the record?

JUDGE ROSENBERG: Off the record.

(Discussion off the record.)

JUDGE ROSENBERG: On the record.

MR. GELLER: Respondent offers for the stipulation of General Counsel that at a regular membership meeting of Local Union No. 3 held February 12th, 1976 the president of Local Union No. 3 mentioned that --

MR. EDELMAN: No, no, say the minutes reflect, I'm not going to say mentioned.

The minutes reflect that is the date.

I want that set out in the stipulation.

MR. GELLER: Off the record?

JUDGE ROSENBERG: Off the record.

(Discussion off the record.)

JUDGE ROSENBERG: On the record.

During the off the record discussion you had something to add, Mr. Edelman?

MR. EDELMAN: I would prefer that statements concerning the minutes be read as the minutes reflect and you can introduce the minutes for all I care.

JUDGE ROSENBERG: Why don't you have them marked as Respondents' 13 and introduce them into evidence?

There wouldn't be any hassle then.

MR. GELLER: The whole thing?

MR. EDELMAN: I have no objection to that, but I would also like to add the testimony of the recording secretary who is present and can testify from personal knowledge that what is reported in fact took place, even independently of minutes.

The minutes will be evidence of direct testimony.

MR. EDELMAN: So then you can testify, I will stipulate that the recording secretary, if called, would testify that the minutes are accurate.

MR. GELLER: Very good.

JUDGE ROSENBERG: Which means that is what transpired.

Mark it 13.

MR. GELLER: Would the Reporter please mark the minutes dated February 12, 1976 as Respondents' 13, dated February 12, 1976.

(The document above-referred to was marked Respondents' Exhibit No. 13 for identification.)

MR. GELLER: Your Honor, I offer Respondents' Exhibit 13 into evidence and place reliance on the following portions for the purposes of this proceeding:

On that portion of the minutes that state that the President of Local Union No. 3 "mentioned that the vacation checks for the 1976 vacation period will bein the amount of $380 per week for a journeyman and proportionately for the remaining divisions."

I am then skipping down a few paragraphs and continuing with the following portion of the minutes:

"He then directed --" excuse me, I will start that again:

"Business Manager Thomas Van Arsdale then directed the attention of the membership to the fact that even though many of the benefit plans are not being adequately funded the payments must go on.

"He stated that for this reason the Committee on Vacations agreed that the vacation payment this year will be $380 for a journeyman.

"'By doing this we will be assured of adequate funds for this vacation period'.

"The Business Manager then made some observations as to the self insurance safety plan.

"He stated that due to the fact that the input to the fund had diminished during the past year some adjustments might be made.

"There have been many meetings between the employers and the self insurance safety plan directors and at these meetings the point was made at the end of 1975 the plan will realize a deficit of $900,000."

Your Honor, on those terms I offer Respondents' Exhibit 13 into evidence.

JUDGE ROSENBERG: Any objection?

MR. EDELMAN: No objection.

JUDGE ROSENBERG: It is received.

(The document above-referred to heretofore marked Respondents' Exhibit No. 13, was received in evidence.)

MR. GELLER: Your Honor, I would also offer the following as the testimony of Mr. Friedler, Jr. if he had been permitted to testify.

That prior to the setting of the vacation payment of $380 for the "A" journeyman, vacation allowance had been $410 for "A" journeyman and that this represented a reduction in vacation allowance made on February 12th, 1976.

JUDGE ROSENBERG: Of $30?

MR. GELLER: Of $30 for the "A" journeyman and a proportionate amount of different categories of members of Local 3.

t5 There would be an across the board 7 percent reduction of vacation pay.

JUDGE ROSENBERG: You so stipulate, Mr. Edelman?

MR. EDELMAN: I stipulate.

JUDGE ROSENBERG: The stipulation is received.

MR. GELLER: Your Honor, in reading from the minutes of February 12th which is Respondents' Exhibit 13 I omitted the final paragraph which follows immediately upon the last quoted portion.

After the words "$900,000," the minutes continue:

"The employers recommended that the Negotiating Committee meet to consider alternatives to help avoid any larger deficit to the funds.

"They made several suggestions as to how to accomplish this objective.

"However, none of those suggestions are acceptable to our Committee."

Is that portion of the minutes also stipulated to?

MR. EDELMAN: Yes.

Is that in the February 12th --

MR. GELLER: Yes.

May I ask the Reporter to mark the minutes of the regular membership meeting dated May 13, 1976 as Respondents' Exhibit 14.

(The document above-referred to was marked Respondents' Exhibit No. 14 for identification.)

MR. GELLER: Your Honor, Respondent offers Respondents' Exhibit 14 into evidence and relies specifically on the paragraph on Page 2 which begins "Brother Schuck reported" which appears to be the second or third full paragraph from the top of the page.

Let us call it the second paragraph, and on Paragraphs 3, 4, 5, 6 and 7 immediately following.

JUDGE ROSENBERG: Any objection to the receipt of the exhibit?

MR. EDELMAN: No objection.

JUDGE ROSENBERG: It is received.

(The document above-referred to heretofore marked Respondents' Exhibit No. 14, was received in evidence.)

MR. GELLER: Respondent requests that the minutes of the regular membership meeting dated June 10, 1976 be marked for identification as Respondents' Exhibit 15.

(The document above-referred to was marked Respondents' Exhibit No. 15 for identification.)

MR. GELLER: Your Honor, Respondent offers Respondents' Exhibit 15 into evidence.

MR. EDELMAN: Do you want to tell me what part is relevant?

MR. GELLER: Respondent relies particularly upon the paragraph on the third page of the minutes, towards the bottom thereof, beginning with "Business Manager Van Arsdale" and continuing down to the bottom of the page, and on to the next page, Page 4 of the minutes, down to and including the first paragraph on that page.

MR. EDELMAN: No objection.

JUDGE ROSENBERG: It is received.

(The document above-referred to heretofore marked Respondents' Exhibit No. 15, was received in evidence.)

JUDGE ROSENBERG: Does that conclude the stipulations?

MR. GELLER: Yes, your Honor.

JUDGE ROSENBERG: All right, go ahead.

Whereupon,

JOSEPH D'ANGELO

having been previously sworn continues to testify as follows:

CONTINUED DIRECT EXAMINATION

Q (By Mr. Geller) Now, at the April 28th meeting of the Trustees of the Pension Committee, how were matters left?

Were any directions given?

What were they, by whom, to whom?

A Yes, at the April 28th meeting, the Chairman of the Pension Committee directed the Chairman of the Joint Industry Board to take whatever actions deemed necessary to preserve the balance of the fund balance.

MR. GELLER: Before continuing chronologically I ask the Reporter to mark this piece of paper as Respondents' Exhibit 16 for identification.

(The document above-referred to was marked Respondents' Exhibit No. 16 for identification.)

MR. GELLER: Can we go off the record?

(Discussion off the record.)

JUDGE ROSENBERG: On the record.

MR. GELLER: In marking Respondents' Exhibit 16 may I note, your Honor, that we neglected to have any but a single copy of this memorandum made and I will ask permission to introduce it at this time or at the proper time and then to withdraw it and submit two copies into evidence at the appropriate time.

JUDGE ROSENBERG: The request is granted.

What does Exhibit 16 purport to be?

MR. GELLER: 16 purports to be a memorandum from Mr. John Calascibetta to Mr. Armand D'Angelo in reference to hospitalization, surgical and major medical benefits.

JUDGE ROSENBERG: Dated?

MR. GELLER: Dated April 23rd, 1976.

Do you want a minute to read it?

MR. EDELMAN: Yes.

I think the record should show, I think it already does, that Mr. Calascibetta is an assistant to the witness and the memorandum is addressed to Mr. Armand D'Angelo, the Chairman of the Pension Committee.

THE WITNESS: The Chairman of the Joint Industry --

JUDGE ROSENBERG: All right.

Have you offered it?

MR. GELLER: The witness hasn't identified it.

JUDGE ROSENBERG: Have you showed it to Mr. Edelman?

MR. EDELMAN: I am looking at it now.

I have no objection.

Q (By Mr. Geller) Do you recognize this memorandum?

A Yes, I do.

Q Will you tell us what it is?

A This is a memorandum from Armand D'Angelo, Chairman of the Joint Board from John Calascibetta, Director of Administration regarding the study that he had began some time in March regarding ways and means of saving a substantial amount of money relative to the major medical and hospitalization expense -- hospitalizati and major medical benefits.

Q Do you recall whether it was submitted before the April meeting of the Trustees?

A Yes, it was.

Q Do you recall approximately when?

A Well, I received a copy from Mr. Calascibetta on the day he submitted it to the Chairman.

Q When was that date?

A April 23rd.

Q 1976?

A 1976.

MR. GELLER: Your Honor, I offer Respondents' Exhibit 16 into evidence.

MR. EDELMAN: No objection.

JUDGE ROSENBERG: It is received.

(The document above-referred to heretofore marked Respondents' Exhibit No. 16, was received in evidence.)

MR. GELLER: May I take it back?

MR. EDELMAN: What is the date, April 23rd, 1976?

Q (By Mr. Geller) Following the meeting of April 28th, what happened then that is relevant to the level of benefit costs and the like?

A Well, the next day, April 29th, we had a meeting at which time we -- I say we, the Chairman of the Joint Industry Board and myself, it was the afternoon of the 29th, and at which time we reviewed much of the information, all of the information that we had obtained through Mr. Calascibetta's memorandum and/or evaluations as to ways and means of saving a substantial amount of money.

At that point a decision was made to close the Dental Department effectively immediately that evening.

JUDGE ROSENBERG: When you say we do you mean you and the Chairman of the Joint Industry Board who happens to be Armand D'Angelo?

THE WITNESS: Yes.

JUDGE ROSENBERG: I think I asked you off the record, he happens to be your father?

THE WITNESS: Yes, he does.

JUDGE ROSENBERG: You two were the only two person
present?

THE WITNESS: Yes.

Q (By Mr. Geller) Did anyone else participate in the decision making to close down the Dental Department?

A Yes.

Well, prior to that point John Calascibetta had participated to a great extent because we had evaluated which benefit, the reduction of which benefit or the elimination of which benefit would be less harmful to the participants of the pension, hospitalization and benefit plans.

Q Did Dr. Krauss participate in the making of the final decision to close the Dental Department?

A No, he did not.

JUDGE ROSENBERG: When the clinic was closed down did Dr. Krauss go off the payroll also?

THE WITNESS: No, he did not.

We have a contract with Dr. Krauss.

JUDGE ROSENBERG: What does he do for the Responden
now?

THE WITNESS: Since the close of the clinic he has been treating those people in prosthetics and crown and bridge who have --

JUDGE ROSENBERG: Treatment continued after the closing?

THE WITNESS: He continued after the closing.

That is when he began actually and he is continuing through the present time.

Q (By Mr. Geller) Which people did he treat after the closure?

A Those people who were under treatment in the prosthetics and crown and bridge on which treatment had been done and we had had appliances in the process of being made by the laboratory.

Q Did this affect anyone in the operating dentistry section?

A No, nonewhatsoever.

Q Did this affect everyone in prosthetics, crown and bridge?

A It will.

Q It will in the future that is?

A Well, he has not completed.

Q I am asking you this, are the patients in prosthetics on an alphabetical basis or was there some determination made as to who would be taken first?

A No, I had stated earlier that I believe it was on a Saturday immediately after the closing, possibly on a Monday that I had asked Dr. Krauss to evaluate, make an evaluation of all of the patients who were in treatment, in prosthetics and crown and bridge and to evaluate them on the basis of which ones can be accommodated most quickly, and we began shortly after scheduling patients as Dr. Krauss had determined they should be scheduled.

Q What extra cost, if any, did it entail to finish off the patients you described in prosthetics and crown and bridge having Dr. Krauss work on them?

A Very little additional cost.

The only additional cost would be to the completion of the appliances, and in some of those cases we did have -- we had received the money from the patient.

Q What added personnel costs were entailed extra that is compared to the personnel costs that existed prior to the shutdown?

A There were none because under our -- we would have h to retain -- we would have retained the clerical staff for a two-week period.

Q Isn't it true that you would have retained Dr. Krauss until the end of his contract?

A Yes, we have a contract with Dr. Krauss.

Q In other words, is it fair to say you saved the entire cost of the payments to the dentists?

A Yes.

Q Now, in making the decision that was finally made on April the 29th was any consideration given as to why it was the Dental Department that was shut down and not the Medical Department?

You might direct your attention also to the Optical Section of the Medical Department.

Why did that and not the others, why the Dental and not the others?

A In the weeks immediately prior to the actual day of the decision and the closing we had been evaluating all of the benefits and we had come to the conclusion that in our mind that the dental benefit was the least beneficial to the participants compared to the Medical Department and Optical Departments since we considered them, Optical and Medical Departments as basic health service to our participants.

The major medical we looked at means and ways of reducing but never, could never conceivably eliminate or reduce it substantially other than the means which are described in Mr. Calascibetta's memorandum.

Several years ago when that major medical -- in 1974, when that major medical plan took the total form that it has now, total coverage for our membership, many of the members who had been carrying on their own costs on their own expense, out of pocket expense, had been carrying additional or supplemental insurance which is Blue Cross or Blue Shield or others had totally and when our plan became a total coverage plan, had completely dropped any supplementary insurance so that our hospitalization and major medical was the only service, was the only coverage that many of our members had, and the fact is that we considered the factors, the factors we considered was that along with the concept that when a man is out of work, the knowledge that in the event of an illness, and there is no such thing as a non-major illness in terms of hospital costs today, but the knowledge that he be secure in knowing that his medical expenses for himself and his family will be covered and taking care of and not to have that added burden along with the burden of unemployment and the burden of the prospect of continuing unemployment, we felt that the Medical Department which again provided the health service, provided a health service to save lives and we have many instances in our Medical Department which is a diagnostic benefit where people's lives have literally been saved, and in judging and weighing one benefit against the other benefit we came to the conclusion which I think we had come to even prior to the actual day of decision, that in order of priority the Dental Department was the least important.

t6 Q Was any --

JUDGE ROSENBERG: Let me ask you this, could you have eliminated the Optical Department without intruding upon the Health or the Medical Department coverage and efficacy?

THE WITNESS: Not in our judgment, your Honor, because -- for several reasons.

Another factor would have been the total overall amount of money saved and by totally eliminating the Optical Department the saving would have been substantially less than that of the Dental Department, in addition to which through our -- our Optical Department is not merely a refraction, it is an examination by an ophthalmologist and the ophthalmologist, in the course of an eye examination -- it is a total eye examination, it is not just writing a prescription for glasses.

I don't know medically, I'm not competent, but there are some mention of 14 other diseases that can be diagnosed through a complete eye examination and we have had many instances where cases such as these has been found.

We had a case where a two or three-year old girl was diagnosed to have a brain tumor when -- through the Optical Department, through the ophthalmologist when she came in for a medical examination, that girl, the infant was recommended to the ophthalmologist and through his examination he diagnosed and ultimately they operated and the girl is fine today.

But they extracted a brain tumor that had it not been diagnosed at that time she may be dead.

JUDGE ROSENBERG: When you talk about the Medical Department I assume that it offers benefits in addition to hospitalization.

Is there a private staff of physicians?

THE WITNESS: Well, it does something else.

It supplements the hospitalization in the fact that it provides services that the hospitalization does not cover.

JUDGE ROSENBERG: I mean --

THE WITNESS: Such as X-rays.

We have physicians.

JUDGE ROSENBERG: You have a staff of internists?

THE WITNESS: We have several internists and we have --

JUDGE ROSENBERG: Radiologists?

THE WITNESS: A cardiologists, a specialists in different fields of medicine.

It is a diagnostic benefit where the individual comes in, gets normal chest X-rays, blood.

JUDGE ROSENBERG: In other words, if I were a member I could go in there and get a physical?

THE WITNESS: A complete physical diagnosis right up to final diagnosis to consultation with an orthopedist or whatever, if necessary.

JUDGE ROSENBERG: How large a medical staff is there?

THE WITNESS: The medical staff is -- well, physicians who are actually on our payroll, there may be 20 or 22, but they give us substantially less in terms of hours.

They may give us four hours a week or 10 hours a week.

JUDGE ROSENBERG: You have no full time?

THE WITNESS: We have no full time complement at all.

The most, the largest number of hours in the Medical Department, I would estimate would be maybe one doctor giving us 18 or 20.

That would be the maximum.

JUDGE ROSENBERG: All right, Mr. Geller.

Q (By Mr. Geller) Since there has been some question raised about the Optical Department, could you very briefly tell us the history of the Optical Department in terms of why the optical benefit was offered originally?

A The optical benefit was offered originally because in the course of people needing glasses, we found going back years ago that many of the men -- we were faced with many compensation cases from glass particles and fragments through a man chopping concrete or drilling out a hole which something would shatter the glass and the glass would damage the eye.

The optical benefit originally was created to provide the membership with a case hardened shatterproof lens.

Now, it is the Federal law that all lenses provided must be case hardened or shatterproof, but at the time we started which was 1950 and 1952, that wasn't the law and the purpose was to provide safety, what we originally had referred to as safety glasses, and was only provided for the membership.

From that it grew to be provided to the spouses and children of the participants.

Q In determining to discontinue the dental service and not the Medical Department what consideration, if any, was given to the factor that we mentioned a number of times of the congestion in the Dental Department?

A That was another factor that we were not able to provide by the congestion that was being created by the -- we were not able to supply the same type of service that we were providing beforehand and rather than provide, start having the quality of service deteriorate that was one of the factors.

There was really no way we could possibly improve on that.

Another important factor that went into our thinking was that during the 1974 negotiations one of the proposals that the Union submitted in the demands was the elimination of the Dental Department and the replacing of it with some other means of coverage.

At no time in those negotiations was the question of the Medical Department being eliminated, did that ever come into negotiations, but the elimination of the Dental Department was a proposal by the Union at that time.

Q Do you know what reason the Union had for questioning the present format of the Dental Department?

Did they express it?

MR. EDELMAN: I will object unless it is shown he is a Union representative.

Q (By Mr. Geller) Were you present in the negotiations?

A Yes, I was.

MR. EDELMAN: Between whom?

MR. GELLER: Between the Union --

THE WITNESS: Between the electrical contractors.

Q (By Mr. Geller) Explain why you were there?

A The Joint Industry Board is the focal point of the entire electrical industry.

It is a labor management board and it sits through every negotiating session, through every negotiating session that was held prior to the 1974 collective bargaining agreement and there are one or two representatives of the Joint Industry Board present at every session.

Q Were you present when the Union suggested that the Dental Department give weight to something, to another form of service?

A I was present at several meetings.

It was discussed -- it wasn't only proposed once.

Q Was any reason given?

Was any given reason that played a role in your later consideration of what to close out?

A Well, the fact that it was brought forward by the representatives -- the negotiating committee for Local 3 is a rank and file committee with maybe one or two officers serving on it, and they are responsive to a wage and policy committee that may consist of 300 people.

The fact that this was one of the proposals that they submitted to us was definitely a factor in our consideration of eliminating the Dental Department.

Q Now, at that time, on April 29, 1976, in determining to shut down the Dental Department as you did, what consideration was given at that time to the people who were still in treatment or who had appointments for treatment in the various departments that we have gone through?

What were your plans at the time?

A Our plans at the time were rather vague.

We knew that we would determine some more specific plans as we got feedback and results, the effect of the closing on the general membership if it concurred with what our feeling was at the time.

But we did not and felt that the people who were in the process with crown and bridge would be in some manner -- would have to be treated and prosthetics.

Q What made you think it could be handled in any way short of keeping on the full staff working to finish off the cases?

A Of continuing --

Q Of continuing the full staff?

A Yes, to --

Q Yes, to work on all the patients?

A I just didn't see that as feasible.

First of all, we just would have had too many problems in turning away people who continually came while you're operating the department for eight or ten.

Q I am asking a slightly different question, but it is related to this.

What made you think that Dr. Krauss could have handled that at the time, the remaining backlog, if you will?

A Of prosthetics?

Q Of prosthetics, if necessary?

What information did you rely upon?

A Oh, the information that we had from the reports, the general feeling as to how many, you know, how many people were in treatment, how many people were in the middle of treatment at that time and we had -- I had the monthly reports that Dr. Krauss supplies us with.

I have the lab bills, all of the record keeping for the entire Dental Department would be with the exception of technical dental charts and the records that Dr. Krauss personally keeps, but the accounting records, the bookkeeping records are all maintained in our office.

Q You said you were waiting for feedback.

What feedback has there been since the closing of April 28th?

A Very little, very, very little.

Q Meaning?

A Meaning hardly any that we had.

Mr. Calascibetta and I have been the ones who initially had dealt with any complaints or any request that came in subsequent to the closing and to my knowledge. I have handled maybe three different cases since then of people who had some question.

The reaction of the membership was relatively

Q You mentioned congestion of the Dental Department.
Wasn't there similar congestion of the Medical Department?

A No.

Q On April 29th a decision was made to close down.
What time of day was it finally made?

A Late afternoon.

Q Whom did you communicate to, you personally?

A To Mr. Calascibetta and Dr. Krauss.

Q At the same time?

A No, there was one other person that we communicated it to that evening, that was Local 153 shop stewards since it involved some of the people he represented.
No, I did not do it at the same time.

Q Whom did you notify first?

A Mr. Calascibetta.

Q And second?

A Dr. Krauss.

Q At what time of day?

A Later afternoon.
I don't recall exactly.

Q Now, what happened on April 29th with regard to communicating the news of the close down to the various people affected, the staff and patients?

A Well, April 29th was a Thursday.

It was that evening that we made the decision that I spoke to Mr. Calascibetta, Dr. Krauss and the shop steward for 153.

At that time we asked the shop steward and we called the business representative from 153.

At that time we asked if they would be in Friday morning, April 30th, if they would be in that Friday morning and we arranged to have all of the girls to be in at 9:00 o'clock on Friday morning, which was unusual because the girls would work split shifts.

Some would start at 9:00, some would start at 11:00 and since some worked Saturday some would be off on Friday and so forth.

Q When you say the girls you refer to the dental assistants in the Dental Department; is that correct?

A Yes.

Q What time did this meeting take place?

A 9:00 A.M.

Q Who was present besides yourself and the girls?

A Dr. Krauss, John Calascibetta, Steven Turkletaub.

Q Who is he?

A He is the shop steward for Local 153.

Q What did you tell him?

A (Continuing) And Miss Gladys Lee who was the business representative for Local 153.

Q Is she an employee of the Joint Industry Board?

A No, she works for Local 153.

Q What was said at this meeting?

A We explained to the girls that it was a very difficult thing that we had to do at that time, we had to discontinue a benefit that had been in existence for over 20 years and it was harder for us to make that decision the night before.

We had gone through a great deal of anguish to eliminate any benefit that you created and one of the earlier witnesses did testify that Dr. Krauss has said to him that he had the finest staff in the group, the best Dental Department around.

We felt that way.

We felt very proud of the representation that the department had developed in the last 10 years.

Q Are you reporting a conversation now?

A Yes.

Q What took place?

A Yes.

Q Continue.

A And we explained to the girls that there was a very difficult decision for us to make and it was being made purely and totally on an economic reason.

We discussed the number of men unemployed, the future of the building industry as it appeared to us at the time, the prospects for the building industry as it appeared in the future and just unable to -- that we were unable to continue to maintain the full services and benefits that we had over the years, and it was necessary to cutback and the decision was made to cutback the Dental Department.

Q Did anyone raise a question from the floor as to your explanation?

A Yes.

Q What was that?

A One of the girls said to me "Does this have anything to do with what has been going on with the dentists?"

Q Did you reply to her?

A Yes, I did.

Q What?

A I said absolutely not.

This in no way has to do with anything other than purely and strictly economic reasons.

Q Did there come a time when you met with any of the personnel in the Medical Department concerning the close down of the Dental Department?

If so, will you tell us how that came about?

A Yes, it was that day that we closed, April 30th.

That Friday that during that day Mr. Calascibetta and myself had agreed that one of us would be in the

Dental Department, physically in the Dental Department from when it opened in the morning until it closed that evening so that anybody that came in with any questions regarding this would to either he or myself and not to anyone else.

So that we both made arrangements, one of us to be there at all times.

Somehow during the course of the day we heard that people were calling the Medical Department and inquiring about if they are closed and there was some reference to "Well, as of now we are."

Q Who said this "as of now"?

A The girls answering the phones in the Medical Department.

Q How did they answer the phones?

A Normal.

Q No, after April the 30th or on or after April 30th?

A Well, they were answering the phone in the proper manner, I assume, but a patient would call or somebody would call in and say to them something to the effect "Are you still open?"

And --

MR. EDELMAN: I will object to this.

It sounds like hearsay to me unless he heard the conversation.

MR. GELLER: Well, the witness is simply explaining how it was that he addressed the medical assistants in the Medical Department later, why he went in and what basis he had for saying what he did to them.

MR. EDELMAN: Doesn't sound like that to me.

It sounds like he is testifying to what patients told clericals.

MR. GELLER: We place no reliance upon what people --

JUDGE ROSENBERG: You are not eliciting this for the truth?

MR. GELLER: Definitely not.

JUDGE ROSENBERG: All right, overruled.

Q (By Mr. Geller) I want you to explain as I think I asked how it happened that you came to address the personnel in the Medical Department.

A Well, some of the patients who were calling had said to us people in the Medical Department are answering the phone and saying in response to a question "Are you open? --"

Q You didn't know if that was true or not, did you?

A No, no, not at that -- no, but in the event that it was true we wanted to go in and speak to whoever was there.

It was towards the end of the day, Friday evening and we went in and whoever was there and we told them if this is going on to absolutely not.

Q Did you make any further explanation of what had gone on in the Dental Department?

A To those girls in the Dental Department at that time?

Q Yes.

A Well, we explained to them, you know, that if anybody asked them anything regarding the Dental Department they are not supposed to answer that, anything regarding anything but the department in which they work to begin with, and refer any and all matters, questions to Mr. Calascibetta or myself.

Q Did you explain to them why the Dental Department had closed down?

A We had told them at that time too as we told the shop steward the night before, by that time he had talked to everybody and pretty much had talked to everybody in his bargaining unit when they had asked him why and had explained to everybody who asked that day that it was purely and strictly for economic reasons.

Q This might be the time to get in some incidental matter.

This shop steward, is he the shop steward for all the employees of the Joint Industry Board?

A And the clerical staffs of the Medical and Dental

Departments, yes.

Q Now, are all the employees of the Joint Industry Board members of the Union, represented by a Union?

A Yes.

JUDGE ROSENBERG: By that you mean the clericals?

MR. GELLER: Yes.

Q (By Mr. Geller) Are there any exceptions to this generalization?

A In the clerical?

Q No, any employee whatsoever?

A Certain management people, yes.

Q How about non-management people?

A Non-management are the dentists and the doctors.

Q Did you answer before there were about 30 doctors who came in and did some work for you on the premises?

A I had said about 21 or 22, I think.

Q Do you pay all of these doctors in the same fashion? Is the fee arrangement the same?

A No, some of them are paid on a salary basis and some of them are paid on a per patient -- a fee basis.

Q Are any payroll taxes paid on the fees paid to the doctors who do work on a per fee basis?

A No.

Q How many doctors are paid on a per fee basis?

MR. EDELMAN: Is this relevant?

MR. GELLER: That is true.

Q (By Mr. Geller) Now, going back to the early part of March, before March 15th, did there come a time when you had any dealings with the Union representatives of Local 153 with respect to clericals?

A Yes, we had a meeting on March 4th.

Q How did that meeting of March 4th arise?

What was it for?

A The purpose of the meeting, within the collective bargaining agreement we had with Local 153, there is a semi-annual evaluation provision and at times during the year that it falls in February and August, and we usually meet with them shortly after the close of either February or August, and we met in this case, we met with the shop steward on March 4th.

At that time they had come forward with a list of maybe, I don't recall how many, but a significant number of requests for re-evaluation of certain positions and upgradings and so forth, and we rejected all of them.

MR. EDELMAN: I am going to object to this, your Honor.

I don't think it is relevant.

JUDGE ROSENBERG: Mr. Geller?

MR. GELLER: We are submitting this to show on March 4th there was a communication made to the representatives of practically the entire employee complement of the Employer that there were to be no pay raises, no re-evaluations, and there was to be a pay freeze and the Employer was in very bad financial shape.

This will be evidence of the fact that this financial shape was recognized as of March 4th, although we have introduced the evidence it was much earlier, but there has been testimony on direct as to some rumors in the Dental Department that things might close down and these might be traced to what happened among the dental clericals as a result of this March 4th negotiating session followed by a membership meeting.

JUDGE ROSENBERG: I will overrule the objection.

Let me ask you this, Mr. Geller, when you refer to Local 153, is that the office employees local?

MR. GELLER: Yes.

JUDGE ROSENBERG: Which is independent of Local 3?

MR. GELLER; Correct.

JUDGE ROSENBERG: They represent the employees whose names are set forth in Paragraph 21 of the complaint?

MR. GELLER: Is it 21?

JUDGE ROSENBERG: Is that the group of girls who are listed there as having been discharged on April 30th?

MR. GELLER: Yes, among others, of course.

JUDGE ROSENBERG: In other words, there were some others in the Medical and Optical Department that were also in the office unit?

MR. GELLER: Yes, and for that matter, there were all the clericals employed by the Joint Industry Board.

JUDGE ROSENBERG: In addition to the health services?

MR. GELLER: Yes.

JUDGE ROSENBERG: All right.

MR. GELLER: Over 100 clericals covering a wide range of jobs.

Q Now, you haven't finished with what went on at this March 4th meeting, have you?

A I don't know where I was, but at the meeting we did state to the representatives of Local 153 that there was no way that we could consider any wage increases or any re-evaluations or any upgradings at all because were just running into such serious financial positions that we were just not able to afford any increases at that time.

Q Do you know if this was communicated in any way to the dental assistants?

A Yes, because I know that immediately after that the shop steward for 153 held the meeting.

It may have been one day or two days later and he held a meeting, at which time he assembled the full membership of Local 153, approximately I guess 105 or 108 people, and he relayed, communicated this to them.

Q Was there any special meeting for dental assistants?

A He held two separate meetings.

He held one at 4:30 which is the normal closing hour for the people who work on a regular shift and like if I recall, he held a separate meeting for those people who work on a shift basis and work on a differential.

Q Which type of employees were on a shift basis?

A Medical and dental clerical employees.

Q What was the employment policy of the Joint Industry Board beginning with about late 1975 with respect to the employment of new employees?

A With respect to new employees, we didn't -- we haven't replaced many employees who have left for one reason or another.

We just have not replaced them.

Q You say you have not replaced them for one reason or another.

They left for one reason or another?

A They left for one reason or another.

Whether some left voluntarily, some left due to an economic layoff, for whatever reason we have not replaced anybody who was left unemployed, who left our employ.

Q Moving to the receipt of the telegram sent by Mr. DiStinti, did you receive the telegram?

A No, Dr. Krauss received the telegram.

Q When did he bring it up to you?

JUDGE ROSENBERG: What telegram are you referring to?

MR. GELLER: I will do it differently.

Q (By Mr. Geller) What was in the telegram?

JUDGE ROSENBERG: I mean what telegram are you referring to?

MR. GELLER: Of March 15th.

JUDGE ROSENBERG: Hasn't that already been submitted into evidence?

I can read it.

MR. GELLER: Okay.

Q (By Mr. Geller) Did there come a time when you had any conversation with Mr. DiStinti?

A Yes.

Q Concerning the telegram and contents of it?

A Yes.

Q Do you know who initiated that telephone call?

A I believe I did.

I believe I called them a day or two after we received the telegram.

Q How did the conversation go?

A Well, I had the telegram.

Dr. Krauss had given me the telegram and I called Mr. DiStinti and I asked him about the telegram and he indicated to me that he represents a majority of the dentists.

I said to him "Well, I don't know that you represent the majority of the dentists.

"All I have is a telegram from you telling me you represent the majority of the dentists."

He says "Well, I have enough signatures, I have cards, I have enough cards to have an election."

So I had already asked him prior to that if he represented any dentists and he said no, he did not.

And he said "I have enough cards to have an election."

JUDGE ROSENBERG: He said he did not represent dentists?

THE WITNESS: Did his Union represent any other dentists, I'm sorry, did he represent any other dentists and he said no, he did not.

He stated that he had enough cards to have an election and he could always file a petition for an election.

I said well, file a petition for an election.

"I don't know that you represent a majority."

Q Was that the extent of the discussion?

A Basically, yes.

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JUDGE ROSENBERG: I don't know whether the record so reflects, but if it doesn't this is as good an opportunity in time to have it so indicate and I assume it is General Counsel's position that the overall appropriate unit consists of how many dentists, 30?

MR. EDELMAN: Thirty.

JUDGE ROSENBERG: Is that your understanding also, Mr. Geller?

MR. GELLER: That is our understanding of General Counsel's position.

JUDGE ROSENBERG: Is that your position too, that there were only 30 dentists?

MR. GELLER: There were only 30 dentists.

We object to the designation of them as a unit for reasons that we explained.

JUDGE ROSENBERG: Assuming that the numbers become critical.

MR. GELLER: Thirty dentists.

JUDGE ROSENBERG: Thirty is the outer limit of the unit?

MR. GELLER: Yes.

JUDGE ROSENBERG: You so stipulate?

MR. GELLER: Yes.

JUDGE ROSENBERG: And you do too, Mr. Edelman?

MR. EDELMAN: Yes, I do.

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MR. GELLER: Excuse me, perhaps it would be necessary to reopen that stipulation.

The tally sheet I notice says 31, and according to our records there were 31 including Dr. Goldsmith who was deceased on the day of the election.

JUDGE ROSENBERG: Is he the 31st?

MR. GELLER: He is --

JUDGE ROSENBERG: Who did not vote?

MR. GELLER: I don't know.

JUDGE ROSENBERG: Assuming he were included he would be 31, right?

MR. GELLER: Yes.

JUDGE ROSENBERG: Goldsmith?

MR. GELLER: Yes.

JUDGE ROSENBERG: So it is actually 31?

MR. EDELMAN: I would say 30 because we take the position Brunetto was a supervisor.

JUDGE ROSENBERG: Is Brunetto included in this 30 or 31?

MR. GELLER: Yes.

JUDGE ROSENBERG: So you contend that it would be 30 including the deceased dentist because of the exclusion of Brunetto?

MR. EDELMAN: Right.

JUDGE ROSENBERG: You contend that there would be 31?

In any event the outside limit is 31?

MR. GELLER: That is definitely so.

JUDGE ROSENBERG: Is that correct, Mr. Edelman?

MR. EDELMAN: That is correct.

In either case, your Honor, 16 would be the number.

JUDGE ROSENBERG: But I have to have some outside limit to predicate an appropriate unit majority.

All right.

Q (By Mr. Geller) When did this telephone conversation take place?

JUDGE ROSENBERG: He testified a day or two.

A A day or two days -- either the 15th or the 16th of March.

Q Did there come a time in October, 1975 when the subject of pay raises for dentists came up?

A Yes.

Q How did it come up?

A Well, normally somewhere in the fall, September --

JUDGE ROSENBERG: This is going into a different tack.

Why don't we take five minutes so the Reporter can come up for some air.

(A short recess was taken.)

JUDGE ROSENBERG: On the record.

Q (By Mr. Geller) Now, did there come a time in October of 1975 that the matter of pay raises for dentists was discussed?

A Yes.

Q Between whom and what was discussed?

A Between Dr. Krauss and myself.

Normally, around October of each year we would review increases for the dental staff.

Dr. Krauss would submit recommendations and we would -- he would sit with myself and John Calascibetta and we would review and approve increases, so that in October of 1975 he came to us and asked should he prepare the list of recommendations as he normally would and we advised him no, that at this time we have to forego any pay increases because of the economic conditions and the condition of the industry, that we have severe unemployment problems, that we could not entertain any recommendations for increases.

Q Do you have any personal knowledge of whether or not this was communicated to the dentists?

A Dr. Krauss had told me that he communicated this to the dentists.

Q But not of your own direct knowledge?

A No.

Q Did there come a time when you gave instructions to Dr. Krauss relative to the purchase of supplies and when was that time?

A Yes, around December of 1975, again it has been our practice, I think there is a dental convention each year in December and at which time Dr. Krauss would attend it and make bulk purchases of supplies.

Again, by purchasing on a bulk rate we were able to get substantial discounts and savings, and when he had requested he would come and ask for limits or how much he should spend or what he should do at the convention.

I advised him at that time that the amount of supplies that he should purchase should be substantially below what he would normally purchase.

Q Do you have any direct knowledge of how much in supplies were purchased at the December '75 convention do you call it, a dental suppliers convention?

A A dental suppliers convention I would say.

Q Do you know how much was purchased by Dr. Krauss?

A Not in the actual dollar amounts, but substantially I seem to recall somewhere around $12,000 but I'm not --

Q Do you know what the amount was in prior years that he purchased?

A Oh, maybe $24,000, $26,000.

t7 Q On another subject, what was Dr. Krauss' job in the Dental Department?

A Dr. Krauss was the Director of the Dental Department and had charge of supervising the dentists and the technical and -- in all aspects of dentistry and anything technically related to dentistry.

Q What role did he have in hiring and firing dental assistants?

A Absolutely none at all.

Q Who did that?

A Directly?

Q Well, who were the people involved in that chain of command?

A John Calaccibetta and now our office manager, Roy Truehart.

JUDGE ROSENBERG: Did you ask dental assistant?

MR. GELLER: Dental assistants.

JUDGE ROSENBERG: Not dentists?

MR. GELLER: Not dentists.

Q (By Mr. Geller) What role did he have in the hiring and firing of dentists?

A He would do all of the interviews in hiring dentists.

He would consult with us as to the -- he would have to get our approval to put dentists on usually and then he would do the interviews and do the actual hiring,

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and --

Q But when it came to dental assistants, did he do the same thing with regard to them as with regard to dentists?

A No, he never even interviewed them.

The first time he would meet any of the clerical staff would be the day they came to work.

Q What about disciplinary measures, did he have that power over the dental assistants?

A No.

If there was any question of disciplining he would come to the office manager.

JUDGE ROSENBERG: Mr. Geller, there aren't any unfair labor practices alleged in the complaint relating to any activities by Dr. Krauss vis-a-vis the dental assistants.

MR. GELLER: Your Honor, I think it was stated inadvertently, I don't know by whom, that perhaps Dr. Krauss played some role in the decision to close down the Dental Department.

I would like to emphasize by this and a few other questions Dr. Krauss has no decision-making powers.

He simply had professional control over the dentists and all administrative matters were left to others, ultimately with Mr. D'Angelo.

JUDGE ROSENBERG: Hasn't this witness already testified who made the decisions, and Dr. Krauss didn't participate in it?

MR. GELLER: Yes.

JUDGE ROSENBERG: Is there any question?

MR. GELLER: Very good.

Q (By Mr. Geller) Now, did there come a time in April or late March or April when you came down and addressed the dentists?

A Yes.

Q What led up to that?

A Well, the date was actually April 1st that I spoke to the dentists and what had led up to that was I had personally received from a couple of patients complaints that dentists were telling them that the department was closing, that they just wanted to shut the door, the department was closing and then the patients would go out to the girls and we had all of these rumors going on.

Along with that Dr. Krauss had told me about one meeting he had, I believe with Dr. Corliss in which Dr. Corliss stated to him now that the men have signed for Union representation they feel they can do whatever they want, that we had no disciplinary authority any longer.

Dr. Krauss had reported to me that the men were talking about a slowdown on the treatment of patients by using an actual slowdown.

This was all on that morning of April 1st and again Dr. Krauss had also reported that some of the patients were telling him that the dentists were telling the patients that the department was closing and he also told me that he suspected incidents of sloppy work, and it was hard for him to believe that some of that work was not deliberate.

Q Was Dr. Krauss the only source of information as to what was reported to you about what the dentists were doing or supposedly doing?

A Well, other than the people who had told me directly about the dentists telling them that.

Q Telling them what?

A The department was closing.

Q Did anyone come to you with any different complaints about what the dentists were doing?

Let me put it another way, were there any complaints relative to dentists trying to obtain assistance from the patients?

A Yes.

One patient did tell -- I assume they are trying to obtain assistance from the patients.

One patient did report that one of the dentists was saying "All we want is a Union, we just want the same things that you people have," and things to that effect.

It really was causing, the whole situation with the rumors and the atmosphere was one that I had never seen in all the years that I had been there and I felt it necessary at that time to speak to the dentists, so I asked Dr. Krauss to assemble all the dentists at the earliest possible time.

I believe we met with them just about 4:00 o'clock which would be the beginning of the afternoon session.

MR. GELLER: I ask the Reporter to mark these two sheets as Respondents' Exhibit 17.

It purports to be the handwritten speech delivered by Joseph D'Angelo on April 1st to the dentists.

(The document above-referred to was marked Respondents' Exhibit No. 17 for identification.)

MR. GELLER: Now, would the Reporter also mark this sheet as Respondents' Exhibit 17-A.

It purports to be a typewritten version, a precise copy of the handwritten copy that was identified as Respondents' Exhibit 17.

(The document above-referred to was marked Respondents' Exhibit No. 17-A for identification.)

MR. GELLER: Off the record?

JUDGE ROSENBERG: Off the record.

(Discussion off the record.)

JUDGE ROSENBERG: On the record.

Q (By Mr. Geller) I show you Respondents' Exhibit 17 and ask you what that is?

A These are the remarks that I made on April 1st.

JUDGE ROSENBERG: Off the record.

(Discussion off the record.)

(Respondents' Exhibit 17 for identification withdrawn and Respondents' Exhibit 17-A for identification remarked Respondents' Exhibit 17 for identification.)

Q (By Mr. Geller) Can you identify that?

A Yes, those are the remarks that I made on April 1st to a meeting in the dentists' lounge at approximately 4:00 P.M.

MR. GELLER: May I offer this into evidence, as Respondents' Exhibit 17?

JUDGE ROSENBERG: Any objection, Mr. Edelman?

MR. EDELMAN: None.

JUDGE ROSENBERG: It is received.

(The document above-referred to heretofore marked Respondents' Exhibit No. 17, was received in evidence.)

MR. GELLER: I have no further questions.

position or you want to take the Fifth on them.

I can't conceive of anything in there that would be of substantial assistance or detriment to you.

If he did see them it would more or less corroborate what this witness testified to.

Certainly it would save a lot of time.

MR. EDELMAN: One more thing I would like to get, your Honor, and that would be any correspondence, whether by letter or any other written correspondence, paper.

JUDGE ROSENBERG: Relating to what?

MR. EDELMAN: Relating to correspondence between the Joint Board, the Pension Committee or Local 3 in connection with their members concerning a notice of the shutdown of the dental clinic.

JUDGE ROSENBERG: Is there any?

MR. GELLER: A slip of paper was given to the dentists upon the shutdown.

JUDGE ROSENBERG: How about the electricians?

MR. GELLER: Well, in one of the Respondents' Exhibits -- let me take a quick look -- yes, in Respondents' Exhibit 15 in evidence which are the minutes of the meeting held June 10, 1976, the regular membership meeting, the portion that was emphasized in introducing the minutes was the notice read by Business Manager Van Arsdale.

He read a notice that will appear in the Electrical

All I want is any minutes of any committee or any meeting, whether it be a committee meeting or other meeting, whereby the reduction of the deficit was discussed, let us say, in the year 1976.

JUDGE ROSENBERG: That should narrow it down.

If I recollect the testimony there weren't too many of them.

MR. EDELMAN: And the plan, of course, so you are going to have the meetings, the plan and the letter to the patients I guess is what it is, all right?

MR. GELLER: Yes.

JUDGE ROSENBERG: All right, you are ready to cross-examine?

MR. EDELMAN: I am.

JUDGE ROSENBERG: Go ahead.

CROSS-EXAMINATION

Q (By Mr. Edelman) Mr. D'Angelo, you are the Director of Administration of the Pension Committee, I take it?

A Yes, sir.

Q That is the committee that is underneath the Joint Board or set up by the Joint Board to run the dental clinic and medical clinic?

A Well, the Joint Industry Board administers all of the benefits in the electrical industry.

The Pension Committee is one of the trusts that has benefits under the collective bargaining agreement which are administered by the Joint Board.

Q The Joint Board administers all of them?

A Yes.

Q That would include the rest home, Bayberry Land and that would include the medical clinic and the dental clinic and the optical division?

A It would.

Q Would it also include major medical plans?

A Yes.

Q And surgical insurance plans and what have you, right?

Everything, the whole shooting match?

A Right.

Q And the Pension Committee just administers or just handles certain parts of the overall benefits?

A Of those that you just --

Q Yes, or does it handle all of them?

A All of them.

Q Handles all of them as well?

A Yes.

Q I take it your father is the Chairman of the Joint Board?

A Yes, he is.

Q Does your father hold any position with Local 3?

the Union.

He was unanimously elected to that position.

Q The Joint Board administers the Bayberry Land rest home; is that correct?

JUDGE ROSENBERG: He answered that already.

MR. EDELMAN: Pardon?

JUDGE ROSENBERG: He answered that already.

Q Is the Bayberry Land rest home still in operation?

A Yes.

Q And the Medical Clinic I take it is still in operation?

A Yes.

Q And the benefits resulting from Bayberry Land and the medical clinic have not been diminished; is that correct?

A That is correct.

Q Is it also correct that the dental clinic still houses the dental equipment that it housed on the day that the clinic was closed?

A Yes.

Q The equipment is still there?

A Well yes.

MR. GELLER: Asked and answered.

A (Continuing) It is still there.

We sought to get price quotes on any value that it may have in removing it and made other inquiries as to any --

MR. EDELMAN: That is not my question.

Your Counsel can ask you that on redirect.

My question is is it still there as of this moment?

THE WITNESS: Yes, it is.

t8 Q I take it there are still certain dental supplies that are also present in the dental clinic?

A Yes.

JUDGE ROSENBERG: Maybe they might be anticipating in the event they get into some financial luck, they might reopen.

MR. EDELMAN: Possible.

MR. GELLER: Your Honor, there are other reasons that can account for this.

MR. EDELMAN: Possibly maybe 277 will withdraw its petition and leave and they can reopen too.

That is a possibility.

JUDGE ROSENBERG: There is a myriad of possibilities.

MR. EDELMAN: That is right.

I hope that by your statement you are not prejudging the case?

JUDGE ROSENBERG: What do you mean prejudging the case?

I am just pointing out to you the obvious.

MR. EDELMAN: I understand, your Honor, and I am pointing out to you another possibility that is also part of the obvious.

JUDGE ROSENBERG: I said there are a myriad of reasons.

MR. EDELMAN: And perhaps this could be one of them.

JUDGE ROSENBERG: May it is.

Maybe it isn't.

MR. EDELMAN: You don't think it is relevant?

JUDGE ROSENBERG: I didn't say that, did I?

MR. EDELMAN: I just was getting that impression from you in connection with your response and I didn't want to.

JUDGE ROSENBERG: How anybody with any sort of logic in his mind can ever get that impression astounds me, Mr. Edelman.

Q (By Mr. Edelman) The optical clinic or the optical part of the medical clinic is still operating with no cutback; is that correct?

A Yes.

Q Now, it is a fact, is it not, that over the years from 1971 on the expenses of the rest home and the dental clinic and medical clinics have continually increased each year?

A Yes.

Q That is true for each operation?

A Well, not having all the figures committed to memory and not having them in front of me --

Q Well, perhaps then we can take some of those exhibits and then you can compare the exhibit with my rough calculations and see if it is accurate.

JUDGE ROSENBERG: The question again was that the cost of maintaining each of these clinics increased each year; is that your question, Mr. Edelman?

MR. EDELMAN: That is correct, your Honor.

JUDGE ROSENBERG: What is that supposed to prove or tend to prove in light of those exhibits?

MR. EDELMAN: I'm trying to point out, your Honor, that the claim is one of economies, increasing costs.

My claim is that everything has increased in costs and that for years the dental clinic has increased in its costs at a greater rate -- rather the medical clinic has increased in its costs at a greater rate than the dental clinic.

JUDGE ROSENBERG: They probably will concede it. So what?

MR. EDELMAN: You don't think it is relevant I take it?

JUDGE ROSENBERG: Again there are a myriad of inferences that can be drawn.

MR. EDELMAN: Well, I am asking the question --

JUDGE ROSENBERG: If you remember the testimony of this witness when asked by his Counsel why was the dental clinic selected over the medical and the optical he testified, if my memory doesn't deceive me, that they maintain the medical and optical because they thought it was preferable from a health services standpoint than the dental.

MR. EDELMAN: Well, of course, that is subjective and I would --

JUDGE ROSENBERG: That is his testimony. True or false is another matter.

MR. EDELMAN: But also I recall in the testimony the crucial motive for discontinuing anything or for modifying anything was in order to relieve a deficit that had existed as a result of continuing expenses.

JUDGE ROSENBERG: Of course.

MR. EDELMAN: I propose to bring out through the cross-examination of the witness that, if anything deserved to be shut down as far as expenses, it could be the rest home or the medical clinic or it could be a number of other benefits that might have been decreased and I expect to be allowed to go into this.

I don't expect to be confined to the subjective reasons that he gives for closing down a dental clinic and as to whether they are valid subjective reasons or invalid subjective reasons.

I propose to show this, an administrator administering a fund of this type, having the avenues available to him to cut down a deficit would have cut down the deficit by other means, and that the reason that the dental clinic was selected is not because it was going down the deficit because indeed the expense that the dental clinic required was not as great as other areas, and this whole reason for the cut down was not as testified by Mr. D'Angelo when he met together with his father and cut it down, but was, rather, because of the Union organization that was going on with the dentists.

That is what I propose to prove and I think it is relevant.

JUDGE ROSENBERG: That is where you are headed for.

Again I say there may be a myriad of inferences I can draw.

As a matter of fact, if I recall, after looking over the exhibits with respect to the funding costs, that for each year, beginning in 1971, I believe, that the costs rose in all areas.

MR. EDELMAN: That is correct.

JUDGE ROSENBERG: All right.

MR. EDELMAN: That is correct, your Honor.

JUDGE ROSENBERG: Go ahead.

Q (By Mr. Edelman) I will show you the Leidesdorf exhibits and ask you to direct your attention to the Statement of Changes in the fund balances.

JUDGE ROSENBERG: Let me ask you this, Mr. Edelman, does the General Counsel contend that there was no economic justification for the curtailment of any of these health services?

MR. EDELMAN: No, quite the contrary.

We concede that the fund had lost money but we contend that --

JUDGE ROSENBERG: Wait a minute, there was some sort of a crisis situation that arose at some time.

MR. EDELMAN: I don't know that I would describe it as a crisis.

We just concede that the figures indicate what they indicate in that there was certainly --

JUDGE ROSENBERG: -- a substantial loss?

MR. EDELMAN: I don't know if I would classify it as substantial.

Whatever the loss indicates on the Leidesdorf reports.

JUDGE ROSENBERG: Absent 277 there might have been an economic justification for the Respondent to take some action to curb its expenditures; is that correct?

MR. EDELMAN: We concede there might have been justification to take some action, that is correct.

JUDGE ROSENBERG: And it is your contention that while some action was justified, this action was not because of Local 277's interest in the dentists; is that correct?

MR. EDELMAN: That is correct.

JUDGE ROSENBERG: That is plain and simple your position, right?

MR. EDELMAN: Plain and simple.

JUDGE ROSENBERG: All right, I'm sorry.

Is there a question pending?

MR. EDELMAN: I asked the witness to pull out the Change of Fund Balances for 1972 to 1975.

A I have them.

Q Now, would it be fair to state, based on the Leidesdorf reports that for the year 1973 compared with 1972 that the rest home expenses was approximately $23,788, say $23,000?

A From '72 to '73?

Q Right?

A It appears to be to me to be $17,000 more in '73.

Q $17,000 more?

A Yes, six thirteen compared to six thirty if that

Q Maybe my arithmetic is wrong.

A 630,736 would be 106,000, approximately.

Q All right, 106,000.

And from 736,856 in '74 to 895,248 in '75, an increase of approximately 158,392?

JUDGE ROSENBERG: How much?

MR. EDELMAN: 158,392.

A 158,000 approximately, yes.

JUDGE ROSENBERG: So what is all this tending to prove, Mr. Edelman?

MR. EDELMAN: Your Honor, I thought we had gone through this before I had commenced these questions.

JUDGE ROSENBERG: I am asking you again.

MR. EDELMAN: I am trying to point out, your Honor, that over the years all of these facilities increased in cost and that as of March 31st, '76 the cost of each facility was at a certain level which I will bring out, and if you are going to reduce a deficit you might select other means to reduce the deficit especially when the deficit of many millions of dollars as described in the direct testimony of this witness is not really going to be reduced substantially by eliminating the dental clinic.

It is a rather strong thing to eliminate a benefit, especially the way this benefit was eliminating, and especially in connection with the timing of this benefit being eliminated when you find out that the benefit that you are eliminating represents a small fraction of the total deficit, and you find out that all other benefits are substantially unchanged.

I think that it is relevant.

JUDGE ROSENBERG: In other words, what you are trying to do is substitute your judgment for the Committee as to how they should do business?

MR. EDELMAN: Your Honor, is that what you thought that I'm trying to do?

Because if you think so, no, that is not because if you think so maybe you ought to rule my questions immaterial.

That is obviously not what I am trying to do.

What I am trying to do is what I told you.

JUDGE ROSENBERG: That is what I'm asking you for, to find out whether you are wasting my time.

MR. EDELMAN: Do you think that I'm wasting your time with these questions?

JUDGE ROSENBERG: Can't you get a stipulation?

I mean, it is as clear as a mountain lake in springtime that these things are in evidence, these records.

Can't you get a stipulation that over the course of five years there has been a periodic increase in all of the health services and that rest home across the board?

You can dispense with a lot of this testimony from this witness.

It is not a matter of credibility getting at these things and letting it go at that.

It is an inference for me to draw as to whether or not the selection of this dental clinic was designed to chill Unionism.

MR. EDELMAN: Well, of course, that is the very issue that we are seeking to get.

You might as well tell me to limit my questions to ask him did you really close or eliminate the dental clinic to chill Unionism or did you do it in your considered judgment because you felt it would do the best and be bound by his answer?

I'm not going to do that.

JUDGE ROSENBERG: Come on, Mr. Edelman!

MR. EDELMAN: You mean that appears to be what you are trying to lead me to ask?

JUDGE ROSENBERG: You don't understand the English language when perfectly spoken.

MR. EDELMAN: It seems to me that is my understanding.

JUDGE ROSENBERG: Don't argue with me.

I am just pointing out to you I think this is result of unemployment in the industry; is that correct?

A I think -- I believe I testified to the effect that we had discussions relating to the deficit in October of '75 which continued through and it was some time after October that we looked at the possibility of reducing or eliminating the benefits for the purpose of reducing the deficit because the letter that went out December 15th did state that benefits were --

Q Benefits that you were considering reducing on December 15th or as of the December 15th letter were in the dental benefit or not --

A There were no benefits considered.

There was no indication that benefits were considered to be reduced on December 15th.

Contrary, the letter that went out on December 15th indicated that we would attempt to maintain all the benefits.

Q So I would assume that in your discussions at this point in time, let me put it to you another way, isn't it the fact that you didn't have discussions in connection with eliminating the dental clinic until the March-April period?

A That is not wholly true, no.

Q It is not your direct testimony that the discussions first began --

A The discussions as to saving and reducing the deficit began prior to March, April.

It was early March that we started to review all of the benefits that were paying to look for ways and means to reduce the deficit.

Q If you were looking for ways and means to reduce the deficit which were several million dollars; is that correct?

A Yes.

Q (Continuing) Certainly one of the means would have been to eliminate the coverage of insurance benefits, surgical benefits, hospitalization benefits, major medical benefits for let us say unemployed members or for the families of members of Local 3 and this was a means that was considered; is that correct?

A It was one of the ways that was considered and rejected immediately.

Q Although it would have resulted in a greater saving than the elimination of the dental clinic?

A But the feeling at the time was that it would have created many more personal individual problems.

The concept here --

Q That was not my question.

My question to you was it would have saved more money than the elimination of the dental clinic?

JUDGE ROSENBERG: I overrule it but let us see if he agrees with it.

A No, I don't.

I think because, based on what you said yourself, Mr. Edelman, that the expenses had continually risen from year to year.

Q Did you make a projection as to the dental clinic expense, what it would be for the fiscal year?

A Yes, based on -- we estimated it to be close to $1 million.

Q Close to $1 million?

A Yes.

Q Did you also make an estimate as to what the medical clinic, including the Opital Department would be on a projected basis?

A Yes, it was more than that.

Q How much more?

A Couple of hundred thousand dollars more.

Q Now, it is true, is it not, that the deficit that you had was in excess of $2 million, maybe 3 million?

Was it $3 million?

A It was about -- I believe if I recall it was about $2,400,000.

Q $2-1/2 million, approximately?

A In March.

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Q So that the elimination of the dental clinic is not going to make up this deficit; isn't that correct?

A It wouldn't make it up, it will account for about 20 percent of it.

Q And you testified that you have not eliminated any other benefits?

A No, but we are continuing on the explanation that I gave before regarding major medical and hospitalization, about going into a direct payment or an assignment where we may be able to affect an additional $1 million savings.

Q You haven't done that as yet?

A We haven't done it as yet because it is something that we have to get --

Q My question -- Counsel can ask you that -- my question is simply you haven't done it as of yet?

[illegible] GELLER: I object to the question because he didn't give the witness a chance to complete the answer.

JUDGE ROSENBERG: Answer yes or no and then give an explanation.

A (Continuing) No, we haven't done it as of yet because in order to do it --

JUDGE ROSENBERG: Why?

THE WITNESS: Because in order to do it it is not something that we can unilaterally do.

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We have to get agreement from hospitals that they will accept, that they will accept not only separate payments, they will accept the payment, but in order for us to make it economically feasible for us to do that we would have to get a beneficial rate from them.

JUDGE ROSENBERG: Have you taken any steps to accomplish that with any hospitals?

THE WITNESS: Yes, we discussed it and we have gotten agreement from several hospitals as of now that we will and once -- there are at least three hospitals, that we have gotten commitments from where they agree to a different rate structure if we would make payments either directly to them or recognize their assignments.

Q It is true, is it not, Mr. D'Angelo, that you have the authority to reduce the coverage of the dental clinic, the medical clinic and the rest home and achieve the same saving as you would when you eliminated the dental clinic; is that not true?

MR. GELLER: I don't understand that.

JUDGE ROSENBERG: Repeat the question.

Q (By Mr. Edelman) It is true that you, and when I say you I am talking about the Joint Board, have the authority to eliminate certain coverage within the dental clinic and eliminate certain coverage within the medical clinic or actually pare down the others by a reduction in staff of dental and medical clinics and the Bayberry rest home and achieve the same savings; isn't that correct?

A Bayberry Land, I don't know if we could have reduced.

It is a convalescent benefit for the members.

I don't know how you reduce that without eliminating it.

Q You could have eliminated that then, couldn't you?

A Yes, we could have eliminated that.

JUDGE ROSENBERG: Let me ask this, and maybe this is apropos of your request for that.

Is there anything in the contract between the Joint Board, rather, the Employers and the Union or in any papers that set up these trusts which forbid you to curtail services unilaterally?

Do you know what I mean?

THE WITNESS: When you say curtail --

JUDGE ROSENBERG: Either eliminate or cutback on medical, dental, optical or rest home services.

THE WITNESS: Not that I know of.

JUDGE ROSENBERG: So that you can do it?

THE WITNESS: Yes.

JUDGE ROSENBERG: Unilaterally?

THE WITNESS: Yes.

Q (By Mr. Edelman) That would include, I assume, coverage of major medical and insurance coverage, surgical benefits and the like?

A Yes.

Q In other words, where money is paid directly to the recipient you could have changed the coverage by eliminating for example, a member's family from such coverage or by eliminating unemployed members of Local 3 from such coverage?

A We could have.

Q You could have?

A Yes.

Q And achieve a savings in that way?

A Yes.

Q Had you decided you wanted to do it that way?

A Yes.

Q Now, it is true, is it not, that on April 30th, that was the first time that the dentists received any official notification that the clinic was closed?

A Yes, it is.

Q As a matter of fact, they never received any official notification that there might be a closing or that a closing was being considered during the month of March and the month of April when it was being considered?

A That's right.

Q Of course had they been notified that there was a possibility of the clinic closing they could have sought employment elsewhere; is that correct?

A Yes.

Q Did you send out a letter to patients who were scheduled for dental work in May and June advising them that the clinic had closed?

A Yes, we telephoned, we telephoned some and we mailed letters to others.

Q And when did telephone calls and the letters start?

A Well, the telephone calls began on April 30th and continued into the next week at some point until we had reached the people who were scheduled for the earlier part of May and then a letter went out to all the other patients who had appointments.

Q You did testify that the medical clinic doctors are unrepresented, that is correct, is it not, by any labor organization?

A Yes.

Q And you are aware of no organization that is taking place among the doctors?

A I'm not aware of any.

Q Have any of the clericals who were employed in the dental clinic been placed in the medical clinic?

A I believe there's one or two we placed or left the clerical employees in the dental unit totally in

P R O C E E D I N G S

JUDGE ROSENBERG: On the record.

This is the resumption of the hearing in Joint Industry Board of the Electrical Industry, et al, Case No. 29-CA-4989.

When we recessed on Wednesday, Mr. Edelman was cross examining the witness, Joseph D'Angelo.

Are you ready to proceed, Mr. Edelman?

MR. EDELMAN: Yes.

JUDGE ROSENBERG: Go ahead.

Whereupon,

JOSEPH D'ANGELO

called as a witness, having been previously sworn, was examined and testified as follows:

CONTINUED CROSS EXAMINATION

Q (By Mr. Edelman) Mr. D'Angelo, the decision to close the Dental Clinic was made on April 29th, is that correct?

A Yes, sir.

Q And the first time that the possibility of closing the Clinic was discussed before the Pension Committee, was on April 28th, is that correct?

A The possibility of closing the Clinic?

Q Yes.

A There had been discussions of reduction of benefits in general.

We had started --

Q That's not my question.

The question was, was there --

Let me put it to you another way.

Was there any discussion on the April 28th meeting of the Pension Committee, of the possibility of closing the Clinic?

A Not directly closing the Clinic.

Q Okay.

Just reduction of benefits, you say?

A Yes.

Q Now, the decision then was made on the 29th, is that correct?

A Yes.

Q And it was made by you and the Chairman of the Joint Board?

A That's correct.

Q At the time --

When did the discussion between you and Armand D'Angelo first take place?

A On the 29th?

Q On the 29th, right.

A Well, it started in the -- I'd say, somewhere before noontime, and then continued later in the afternoon.

Q Where did the discussion take place?

A I'm trying to remember the hotel.

We were at a UJA luncheon, I believe, and we met there a little early, and we sat after the luncheon in one of the anterooms.

Q Was anyone else present during this discussion, other than yourself and Armond D'Angelo?

A Not at the time we were discussing this matter.

Q Now, how long were your discussions concerning this matter?

How long did they take?

A Cumulative?

Q Yes.

A Several hours.

Q So that you were considering a number of factors in connection with the decision to shut down the Dental Clinic?

A Well, the decision --

Can I answer that a little?

Q Yes, go ahead.

A The discussion wasn't only specifically to close down the Dental Clinic.

The discussion was pertaining to which benefits, what would be the best way, and the Dental Department was the primary point of discussion.

But, we did, also, discuss the aspects of the pros and cons of the Medical versus the Dental, and --

Q When you say, "the pros and cons of the Medical versus the Dental," was there some consideration to closing the Medical Clinic?

A Well, there was consideration initially as to reducing benefits, which, when I say reducing, I mean, reducing or eliminating benefits, and which ones, and prior to making the decision, the priorities were established, in the sense of which ones were deemed to be more important than others.

Q Well, in your discussions on the 29th, did you -- did you consider the fact that there were a great many members who were undergoing dental treatment, and were in the middle of extensive dental treatment?

Was that considered?

A Yes.

Q And was it also considered that as an alternative, you might have been able to eliminate some of the dental coverage, rather than eliminate the Clinic, itself?

Was that considered?

A Yes.

Q I take it, that was rejected, ultimately?

A It was rejected that, rather than providing any type of half-way service, either in limited, either in limited treatment or persons eligible to receive treatment, rather than those alternatives, we elected to discontinue the entire benefit, and another factor that had to be considered at that point, would be how much actually would have been saved by having a partial benefit, if we can call it that.

Q Did you ever do any study as to how much would be saved by reduction in benefits, in connection with the Dental Clinic?

A An in depth study, no.

I think we evaluated it, you know, in our minds, as to what the, you know, what the overall effects might be, what -- but not an in depth -- not saying if we discontinued --

Q No figures, in other words, were actually --

A Not to put them to paper and say, so many of the patients treated with spouses, so, if we discontinue the spouses, we would have this many less patients.

Q Was the possibility of discontinuing what might be called cosmetic dentistry, considered?

A What do you mean by cosmetic dentistry?

Q Well, crown bridgework, gold crown inlays, and keeping the clinic open to maintain remedial dentistry, like painful cavities or tooth extractions, or things that, in other words, there's some dentistry where a person goes to a dentist because he's in pain and needs to be

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treated, either it's a tooth that comes out or a filling that's paining him, and there's other dentistry people go to have because they want to look better, it's more convenient for them to have a crown, rather than a lot of silver fillings.

That type of distinction.

Was that ever explored?

A No.

Because I don't think we -- I don't think we ever really considered that we just did crown and bridges, or, you know, for epople to look better.

I think, for the most part, that the dentistry that was done, was done because it was dentally necessary, or the normal dental treatment that a patient would receive, as opposed to strictly cosmetic, because the front teeth are not beautiful, we wouldn't cap them.

Q During your discussion on the 29th, was it -- did you engage in any discussions concerning elimination of other benefits, or reduction of other benefits, like the major medical or the surgical benefits, or those type of benefits?

Was that explored at this meeting?

A The major medical or surgical, no.

Because I believe that substantially earlier than that date, we had concluded in our minds that reducing or

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eliminating the major medical and surgical hospitalization benefit was not in the best interests of the general participants.

Q Had there been a -- facts or figures as to how much of the deficit the elimination of the Dental Clinic would eliminate?

A By eliminate, well, we had estimated that on an annual basis, it would be close to a million dollars.

Q What percentage of your deficit would have that eliminated?

A At the time we were projecting, I assume -- if I recall the figures, somewhere around 20%.

I believe the total deficit was projected at that point somewhere around $5 million.

Q Now, in connection with your --

Well, withdraw that question.

You were aware, I take it, that on April 21st, the Regional Director's decision directing an election in the unit of dentists had issued?

A Yes, sir.

Q I take it, Armand D'Angelo was aware of this, as well?

A Yes, sir.

Q In your discussion in connection with the closing of the clinic, did you take this factor into consideration?

A Not at all.

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Q It was not discussed at all --

A No.

Q -- that there was an impending --

When I say, "discussed at all," you didn't mention it, and your father didn't mention it in your discussions on the 29th?

A Not at all.

Q Now, before you made the decision, final, and informed Dr. Krauss, did you consult with your attorney as to the legality of such decision?

Or the impact that it might have in connection with the impending election?

A No.

Q You did not?

A No.

Q So, the decision was made by you and Armand D'Angelo, without consulting any attorney?

A That's correct.

Q Now, I would like to ask you exactly on what authority you and Armand D'Angelo, had to make such a significant elimination of benefits?

MR. GELLER: I'll object to that.

I think the only relevant question is what happened, not the construction of authority, under any particular trust agreement or the like.

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That's a --

I don't think we should get into the very collateral matter of fiduciary law in this state.

JUDGE ROSENBERG: Well, didn't I ask Mr. Edelman on Wednesday whether there was any law, state or otherwise, or any proscription in the trusts, that was set up, which would forbid the elimination, unilaterally, I think is the word I used, the elimination of any or all of these, and he said, no.

MR. EDELMAN: Who said no?

JUDGE ROSENBERG: The witness.

MR. EDELMAN: That's what I'm coming to.

I have the plan here, which I would like to have marked as General Counsel's Exhibit 8.

(General Counsel's Exhibit 8 was received and marked for identification, of this date.)

JUDGE ROSENBERG: Your last Exhibit was 7-B, as my notes indicate, which was a Union demand receipt.

So, I guess that's 8.

Q (By Mr. Edelman) Mr. D'Angelo, this is the pension plan established by, well, it's self-explanatory.

This is, in effect, the plan that you administer, is that correct?

A Yes, this is it.

Q You are bound by the terms of this agreement, is that

BEST COPY AVAILABLE

Q So that the elimination of the dental clinic is not going to make up this deficit; isn't that correct?

A It wouldn't make it up, it will account for about 20 percent of it.

Q And you testified that you have not eliminated any other benefits?

A No, but we are continuing on the explanation that I gave before regarding major medical and hospitalization, about going into a direct payment or an assignment where we may be able to affect an additional $1 million savings.

Q You haven't done that as yet?

A We haven't done it as yet because it is something that we have to get --

Q My question -- Counsel can ask you that -- my question is simply you haven't done it as of yet?

MR. GELLER: I object to the question because he didn't give the witness a chance to complete the answer.

JUDGE ROSENBERG: Answer yes or no and then give an explanation.

A (Continuing) No, we haven't done it as of yet because in order to do it --

JUDGE ROSENBERG: Why?

THE WITNESS: Because in order to do it it is not something that we can unilaterally do.

We have to get agreement from hospitals that they will accept, that they will accept not only separate payments, they will accept the payment, but in order for us to make it economically feasible for us to do that we would have to get a beneficial rate from them.

JUDGE ROSENBERG: Have you taken any steps to accomplish that with any hospitals?

THE WITNESS: Yes, we discussed it and we have gotten agreement from several hospitals as of now that we will and once -- there are at least three hospitals, that we have gotten commitments from where they agree to a different rate structure if we would make payments either directly to them or recognize their assignments.

Q It is true, is it not, Mr. D'Angelo, that you have the authority to reduce the coverage of the dental clinic, the medical clinic and the rest home and achieve the same saving as you would when you eliminated the dental clinic; is that not true?

MR. GELLER: I don't understand that.

JUDGE ROSENBERG: Repeat the question.

Q (By Mr. Edelman) It is true that you, and when I say you I am talking about the Joint Board, have the authority to eliminate certain coverage within the dental clinic and eliminate certain coverage within the medical clinic or actually pare down the others by a reduction in staff of dental and medical clinics and the Bayberry rest home and achieve the same savings; isn't that correct?

A Bayberry Land, I don't know if we could have reduced.

It is a convalescent benefit for the members.

I don't know how you reduce that without eliminating it.

Q You could have eliminated that then, couldn't you?

A Yes, we could have eliminated that.

JUDGE ROSENBERG: Let me ask this, and maybe this is apropos of your request for that.

Is there anything in the contract between the Joint Board, rather, the Employers and the Union or in any papers that set up these trusts which forbid you to curtail services unilaterally?

Do you know what I mean?

THE WITNESS: When you say curtail --

JUDGE ROSENBERG: Either eliminate or cutback on medical, dental, optical or rest home services.

THE WITNESS: Not that I know of.

JUDGE ROSENBERG: So that you can do it?

THE WITNESS: Yes.

JUDGE ROSENBERG: Unilaterally?

THE WITNESS: Yes.

Q (By Mr. Edelman) That would include, I assume, coverage of major medical and insurance coverage, surgical benefits and the like?

A Yes.

Q In other words, where money is paid directly to the recipient you could have changed the coverage by eliminating for example, a member's family from such coverage or by eliminating unemployed members of Local 3 from such coverage?

A We could have.

Q You could have?

A Yes.

Q And achieve a savings in that way?

A Yes.

Q Had you decided you wanted to do it that way?

A Yes.

Q Now, it is true, is it not, that on April 30th, that was the first time that the dentists received any official notification that the clinic was closed?

A Yes, it is.

Q As a matter of fact, they never received any official notification that there might be a closing or that a closing was being considered during the month of March and the month of April when it was being considered?

A That's right.

Q Of course had they been notified that there was a possibility of the clinic closing they could have sought employment elsewhere; is that correct?

A Yes.

Q Did you send out a letter to patients who were scheduled for dental work in May and June advising them that the clinic had closed?

A Yes, we telephoned, we telephoned some and we mailed letters to others.

Q And when did telephone calls and the letters start?

A Well, the telephone calls began on April 30th and continued into the next week at some point until we had reached the people who were scheduled for the earlier part of May and then a letter went out to all the other patients who had appointments.

Q You did testify that the medical clinic doctors are unrepresented, that is correct, is it not, by any labor organization?

A Yes.

Q And you are aware of no organization that is taking place among the doctors?

A I'm not aware of any.

Q Have any of the clericals who were employed in the dental clinic been placed in the medical clinic?

A I believe there's one or two we placed or left the clerical employees in the dental unit totally in

PROCEEDINGS

JUDGE ROSENBERG: On the record.

This is the resumption of the hearing in Joint Industry Board of the Electrical Industry, et al, Case No. 29-CA-4939.

When we recessed on Wednesday, Mr. Edelman was cross examining the witness, Joseph D'Angelo.

Are you ready to proceed, Mr. Edelman?

MR. EDELMAN: Yes.

JUDGE ROSENBERG: Go ahead.

Whereupon,

JOSEPH D'ANGELO

called as a witness, having been previously sworn, was examined and testified as follows:

CONTINUED CROSS EXAMINATION

Q (By Mr. Edelman) Mr. D'Angelo, the decision to close the Dental Clinic was made on April 29th, is that correct?

A Yes, sir.

Q And the first time that the possibility of closing the Clinic was discussed before the Pension Committee, was on April 28th, is that correct?

A The possibility of closing the Clinic?

Q Yes.

A There had been discussions of reduction of benefits in general.

We had started --

Q That's not my question.

The question was, was there --

Let me put it to you another way.

Was there any discussion on the April 28th meeting of the Pension Committee, of the possibility of closing the Clinic?

A Not directly closing the Clinic.

Q Okay.

Just reduction of benefits, you say?

A Yes.

Q Now, the decision then was made on the 29th, is that correct?

A Yes.

Q And it was made by you and the Chairman of the Joint Board?

A That's correct.

Q At the time --

When did the discussion between you and Armand D'Angelo first take place?

A On the 29th?

Q On the 29th, right.

A Well, it started in the -- I'd say, somewhere before noontime, and then continued later in the afternoon.

Q Where did the discussion take place?

A I'm trying to remember the hotel.

We were at a UJA luncheon, I believe, and we met there a little early, and we sat after the luncheon in one of the anterooms.

Q Was anyone else present during this discussion, other than yourself and Armand D'Angelo?

A Not at the time we were discussing this matter.

Q Now, how long were your discussions concerning this matter?

How long did they take?

A Cumulative?

Q Yes.

A Several hours.

Q So that you were considering a number of factors in connection with the decision to shut down the Dental Clinic?

A Well, the decision --

Can I answer that a little?

Q Yes, go ahead.

A The discussion wasn't only specifically to close down the Dental Clinic.

The discussion was pertaining to which benefits, what would be the best way, and the Dental Department was the primary point of discussion.

But, we did, also, discuss the aspects of the pros and cons of the Medical versus the Dental, and --

Q When you say, "the pros and cons of the Medical versus the Dental," was there some consideration to closing the Medical Clinic?

A Well, there was consideration initially as to reducing benefits, which, when I say reducing, I mean, reducing or eliminating benefits, and which ones, and prior to making the decision, the priorities were established, in the sense of which ones were deemed to be more important than others.

Q Well, in your discussions on the 29th, did you -- did you consider the fact that there were a great many members who were undergoing dental treatment, and were in the middle of extensive dental treatment?

Was that considered?

A Yes.

Q And was it also considered that as an alternative, you might have been able to eliminate some of the dental coverage, rather than eliminate the Clinic, itself?

Was that considered?

A Yes.

Q I take it, that was rejected, ultimately?

A It was rejected that, rather than providing any type of half-way service, either in limited, either in limited treatment or persons eligible to receive treatment, rather than those alternatives, we elected to discontinue the entire benefit, and another factor that had to be considered at that point, would be how much actually would have been saved by having a partial benefit, if we can call it that.

Q Did you ever do any study as to how much would be saved by reduction in benefits, in connection with the Dental Clinic?

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A What do you mean by cosmetic dentistry?

Q Well, crown bridgework, gold crown inlays, and keeping the clinic open to maintain remedial dentistry, like painful cavities or tooth extractions, or things that, in other words, there's some dentistry where a person goes to a dentist because he's in pain and needs to be

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eliminating the major medical and surgical hospitalization benefit was not in the best interests of the general participants.

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A By eliminate, well, we had estimated that on an annual basis, it would be close to a million dollars.

Q What percentage of your deficit would have that eliminated?

A At the time we were projecting, I assume -- if I recall the figures, somewhere around 20%.

I believe the total deficit was projected at that point somewhere around $5 million.

Q Now, in connection with your --

Well, withdraw that question.

You were aware, I take it, that on April 21st, the Regional Director's decision directing an election in the unit of dentists had issued?

A Yes, sir.

Q I take it, Armand D'Angelo was aware of this, as well?

A Yes, sir.

Q In your discussion in connection with the closing of the clinic, did you take this factor into consideration?

A Not at all.

Q It was not discussed at all --

A No.

Q -- that there was an impending --

When I say, "discussed at all," you didn't mention it, and your father didn't mention it in your discussions on the 29th?

A Not at all.

Q Now, before you made the decision, final, and informed Dr. Krauss, did you consult with your attorney as to the legality of such decision?

Or the impact that it might have in connection with the impending election?

A No.

Q You did not?

A No.

Q So, the decision was made by you and Armand D'Angelo, without consulting any attorney?

A That's correct.

Q Now, I would like to ask you exactly on what authority you and Armand D'Angelo, had to make such a significant elimination of benefits?

MR. GELLER: I'll object to that.

I think the only relevant question is what happened, not the construction of authority, under any particular trust agreement or the like.

That's a --

I don't think we should get into the very collateral matter of fiduciary law in this state.

JUDGE ROSENBERG: Well, didn't I ask Mr. Edelman on Wednesday whether there was any law, state or otherwise, or any proscription in the trusts, that was set up, which would forbid the elimination, unilaterally, I think is the word I used, the elimination of any or all of these, and he said, no.

MR. EDELMAN: Who said no?

JUDGE ROSENBERG: The witness.

MR. EDELMAN: That's what I'm coming to.

I have the plan here, which I would like to have marked as General Counsel's Exhibit 8.

(General Counsel's Exhibit 8 was received and marked for identification, of this date.)

JUDGE ROSENBERG: Your last Exhibit was 7-B, as my notes indicate, which was a Union demand receipt.

So, I guess that's 8.

Q (By Mr. Edelman) Mr. D'Angelo, this is the pension plan established by, well, it's self-explanatory.

This is, in effect, the plan that you administer, is that correct?

A Yes, this is it.

Q You are bound by the terms of this agreement, is that correct?

A Yes.

Q I direct your attention to Page 35 of that -- the Section is 37, and the title of that section is amended, termination.

And I ask you, you're bound by those terms, is that correct?

A We're bound by all the terms of this --

Q Right.

Can I have it?

A Can I read it?

Q Certainly.

(Whereupon, the witness peruses the above-mentioned document.

MR. GELLER: Hold on just a second, please, I want to get my copy.

What page?

MR. EDELMAN: Thirty-five, I think; Section 37.

Q Is that correct?

A Yes.

Q I take it, if you were going to eliminate the total plan, this would have to be brought before a meeting of the trustees and unanimously voted upon, is that correct?

A I --

MR. GELLER: Objection.

It's a matter of construction of the agreement, and this witness shouldn't be asked questions along those lines.

JUDGE ROSENBERG: Well, if he knows.

He's the fellow who's supposed to be abiding by whatever the pension plan provides.

MR. GELLER: When it comes to a matter such as this, he might consult lawyers, if there were any question of construction.

It's a legal question.

JUDGE ROSENBERG: The question is whether or not he did, or followed the strictures that appear in that pension plan.

Either he did or he didn't.

MR. GELLER: If that's the question, I'll withdraw my objection.

JUDGE ROSENBERG: And whether he did or he didn't, even if he went beyond it, did he do certain things.

Q (By Mr. Edelman) May question was, if you were going to eliminate the plan, that would include the dental, surgical, Bayberry, all the benefits, that would require, would it not, a unanimous vote of the board, held at a meeting of the Board of Trustees of the Pension Committee?

MR. GELLER: Objection.

That's clearly a question of, he's asking the witness to interpret, I think it is Article 37.

JUDGE ROSENBERG: What does Article 37 say?

MR. GELLER: Whatever it says, it says.

It's in evidence.

Why should the witness interpret as to what should be required.

JUDGE ROSENBERG: If the witness --

The witness testified a little while ago that he followed every letter, and every word in that pension plan agreement.

Is that correct?

THE WITNESS: I testified that we are -- we are bound by --

JUDGE ROSENBERG: -- by the very words of that agreement?

THE WITNESS: -- by the words of that agreement.

JUDGE ROSENBERG: He's simply being asked with respect to Paragraph 37, did you follow that.

MR. GELLER: If that's the question, fine.

JUDGE ROSENBERG: Is that your question?

MR. GELLER: I understand the question differently.

MR. EDELMAN: I worded the question as I worded it.

I think it's a fair enough question.

I'm trying to ask the witness whether, being the administrator, if he and his father had decided to eliminate all the benefits, set out in this plan, would he have been able to do this as a meeting with his father, or would he have had to have a meeting of the trustees of the Pension Committee in order to do that?

Now, I want to find the answer.

MR. GELLER: That's a different question than asking did you follow Article 37 in this case.

MR. EDELMAN: That's the question.

Is there any objection to that question?

MR. GELLER: Yes.

It's hypothetical, and a hypothetical that requires what if something had happened, how would you have applied Article 37.

JUDGE ROSENBERG: I don't construe his question that way.

Overruled.

MR. EDELMAN: Would the reporter repeat my last question, please, to the witness?

(Whereupon, the requested question was read back by the reporter.)

JUDGE ROSENBERG: Why don't you simply ask him whether or not he's aware of Article 37?

Q (By Mr. Edelman) You are aware of Article 37, are you not, Mr. D'Angelo?

The one that you just read?

A I read it.

If I may read it again.

Q Sure.

JUDGE ROSENBERG: Do you have another copy of that?

MR. GELLER: Yes.

I'll give you one.

Q You are aware of that --

A Yes, I am.

Q When you made the decision to close the Dental Clinic, did you take into consideration Section 37 of the plan?

A No.

We didn't refer to it, if that's the question.

We didn't read it.

Q Now, are there --

Did you have any authority by any prior ratification of the Pension Committee, or any meeting of the trustees, which authorized you to make the decision to close the Clinic on April 29th?

A We had -- We had the direction of the Committee from the meeting the day before, April 28th, that indicated where they -- where they indicated to the Chairman of the Joint Board, that he should take steps necessary to reduce the deficit, and to protect the surplus of the fund.

Q I see.

So that, it is your testimony that the sole authority that you relied upon, for closing this Clinic, was the resolution or the motion that was passed --

A The direction.

Q Pardon?

A The direction.

Q -- the direction that was given, at the meeting on the 28th of the Pension Committee, authorizing you to take appropraite steps to reduce the deficit?

A Yes.

Q And you assumed that this was within your powers under that direction?

A Yes.

Q And would you have felt that it was within your powers, pursuant to this direction, to eliminate other benefits, if you had so concluded that this is what was needed?

In other words, suppose you and your father said, you know, if we reduce the dental, and the medical, and Bayberry, we'll have no deficit at all.

Did you feel, was it your opinion, that you were authorized, pursuant to the direction that had been given on the meeting of the 28th, to eliminate all these, if, in your opinion, it was advisable?

A I really don't know if I could answer that question, Mr. Edelman.

Q Okay.

But you did at least feel that you had the authority to close the Dental Clinic pursuant to the direction?

A I feel we had the authority to do something substantial.

Whether it be close the dental or close the medical, or do something substantial, based on that direction.

Whether we would have done all of them, based on that direction, I -- is the question I can't answer.

Q Are there any rules or any regulations, that are part of that agreement, that set forth procedures for eliminating any part of the plan?

A This agreement?

Q Yes.

In other words, are there any rules that are attached to that agreement, that set forth any procedures to be followed for eliminating, say, the Dental Clinic?

A Just --

MR. GELLER: Does General Counsel mean in addition to this?

MR. EDELMAN: Yes, in addition to that.

A No.

Q So, I take it that is the sole instrument that refers to elimination and termination of the plan, is that correct, or procedures that must be followed?

A I believe it is.

Q Right.

MR. EDELMAN: I will offer the doucment in to evidence at this point, Your Honor.

JUDGE ROSENBERG: Any objection?

MR. GELLER: I have no objection.

JUDGE ROSENBERG: All right, it is admitted. Received.

(Whereupon, the above referred to was received and marked General Counsel's Exhibit 8 in evidence.)

MR. GELLER: I'll make another copy available to the reporter, and I have provided one.

Q (By Mr. Edelman) Now, was the shutdown of this Dental Clinic, was it ever ratified by a vote of the Pension Committee?

A I'm not sure if it was ratified in the sense by a vote.

At the subsequent meeting, at the June meeting, I believe it was, but I really don't recall if it was done by vote.

But, at the next regularly scheduled meeting, which would have been the June meeting, the action that was taken by the administrators was recorded, and the trustees did express agreement with that.

Whether they did it by vote, I don't recall, Mr.

May and June?

A At that point?

Q Yes.

A Yes.

Q What was your conversation with Dr. Krauss at that point?

A At that point, we -- we discussed -- I believe he brought it up, what happens, you know, what happens to the patients.

I said, well, you know, we'll see. We'll have to take care of those, you know, some of them, in some manner.

At that point, I don't think we knew exactly in what way we were going to do it. But I think, at that point, we knew that we would have to take care of some of the patients, differentiating patients that were in operative dentistry, from those that were in prosthetics and crown and bridge.

Q Would it be fair to say that no plan, as of five o'clock or so on the 29th, was initiated by the Committee, or the Joint Board, or Dr. Krauss, as to which patients would be taken care of, and the extent of the care?

A Well, I think we knew which patients.

I think what we didn't know was in what order and in what manner might we consider treating them.

Q When you say you think you knew which patients --

A In the sense that we knew the patients who were in crown and bridge and prosthetics, were the ones that initially we would take care of. Whether --

When I say -- I don't know specifically what patients.

Q When we talk about prosthetics and crown and bridge, did the patients engaged in such work, did they pay a share of this work, do you know?

A Yes.

Q And they had paid --

A Not all -- Not all of them.

As a matter of fact, I believe it's their procedure that they pay at the conclusion of the work.

So that, anyone who was in the course of -- who was in the course of treatment, may not have paid.

Probably did not pay.

Q Was any arrangement at the time of the shutdown, in your meeting with Dr. Krauss on the 29th, discussed concerning patient care of those patients that were in the middle of treatment?

Did you set any schedule?

Did you know who was going to take care of the work?

A Well, we considered it.

I don't know if it was done exactly at that, you know, at that meeting, Mr. Edelman.

But we did --

Because I think, at that point, I think we were all going -- we had never -- we had never discontinued a benefit, and we were all in some kind of a --

I'm trying to describe the mood.

-- but not a very happy mood about having to to that. And it was either that evening or the next day or Saturday, that we did discuss with Dr. Krauss ways of treating them, establishing, evaluating each of the charts.

Q So, these would have been plans that were made to treat patients after the shutdown actually took place?

A Yes.

Q Your answer is, yes?

A Yes.

Q Did you ever consider keeping the dentists on, who were engaged in the crown and bridge, and the prosthetic work, in the type of work that you felt would be continued, rather than have Dr. Krauss perform all the this work?

A Yes, we considered -- well, we considered keeping on some of the dentists.

Whether, you know, --

Probably the ones you allude to, I don't know how many were in crown and bridge and prosthetics, but we did discuss keeping on five or six or so dentists to complete that work.

We also discussed sending the patients out to dentists, to --

Q What was your reason for not keeping the dentists in the Clinic on to perform this work?

A We were very -- very honestly, we were concerned at the time about selecting five of the thirty dentists, and being faced with this kind of -- this same kind of situation, selecting five of -- out of the thirty or four, or a number out of it, as to who we might select.

Q When you say, who you might select, were you concerned at that point about unfair labor practice charges?

A Yes, we were.

Q So, in the selection of --

In the possibility of keeping any dentists on, you were concerned about possible unfair labor practice charges?

A Yes, we were.

Because, at that time, we had no -- we had no idea at all -- we knew we had thirty dentists.

We had no idea at that point who had, who had not, signed the Union cards, and even if by some chance we selected five dentists, and they all turned out to be five who had not signed cards, the inference would have been -- is there.

Q But you didn't have any concern about committing any unfair labor practices in connection with your decision to shut down the whole Clinic?

A No, we did not.

Q Now, in connection with the May -- April 28th meeting, you indicate there that there was a direction that was given toyou to take appropriate measures.

A Yes.

Q Because, at this meeting, I take it, you had indicated grave concern about the rising deficit, is that correct?

A Yes.

Q Can you tell me what the discussion was at the meeting of the 28th, in connection with the deficit?

A Well, at the meeting of the 28th, the financial report, the March 31st financial report, I believe indicated the deficit of close to two and a half million dollars, and this was substantially -- this was already equal, the amount equal to the Liedesdorf deficit, as of -- as for the prior year.

And it also indicated, I believe, the increase in the deficit for the two months was somewhere over a million and a quarter, and the rising -- the rising -- the rate of acceleration of the deficit was the item of concern.

And the discussion centered upon the responsibility of the trustees to protect --

One of their questions -- One of their basic questions was, are these deficits that are contained within the welfare portion, may they affect the pension payments.

Because, I believe, that was the -- that is the primary concern of the trustees, is the continuation of payments of pensions and protect that pension payment.

And that, at the rate of -- the rate of this deficit, the deficit would be a minimum of $5 million by the end of the year.

There was discussion that the employment picture did not appear to be -- to have any prospect of increasing over the balance of this year, and who knew into 1977.

Q Now, this was the discussion.

Now, you say that there was a direction indicating that you were to take appropriate action to reduce the deficit.

A Yes.

Q Was this a vote, or did one person suggest it, and no one else said anything about it?

How did this come about?

A Well, at the conclusion of the discussion, the Chairman of the Pension Committee --

Q Who was that?

A Mr. Minervini, M-I-N-E-R-V-I-N-I, the Chairman of the Pension Committee, Mr. Minervini, said to the Chairman of the Joint Industry Board, -- I can't quote him directly. But, something to the effect that it seems to be the sense of the board that the -- that we take all the necessary -- all actions, whatever actions necessary to protect the balance and reduce the deficit, and turned to the Chairman of the Joint Board, who sits next to him and said, would you do that and report back to the board on --

Q So, there was no vote taken?

A No.

Q And the subject of closing the Clinic didn't come up at this meeting?

A No.

MR. EDELMAN: Now, I'd like to have this marked --

JUDGE ROSENBERG: What was the date of this meeting?

THE WITNESS: April 28th.

MR. EDELMAN: These are the minutes to the April 28th meeting.

I'd like to have themmarked General Counsel's Exhibit 9.

(General Counsel's Exhibit 9 was received and marked for identification, of this date.)

Q (By Mr. Edelman) Mr. D'Angelo, I show you General Counsel Exhibit marked for identification 9, and ask you to take a look at that, please, and tell me, are those the minutes that, the official minutes of the April 28th meeting?

A Yes.

With one exception.

Along with -- There are people who appear at the board meeting to receive their pension, and they come in, in person, and each one, there's a single page write-up on their work record and so forth, which is within the minutes --

Q Other than that?

A Yes.

Q That's the official minutes, the accurate minutes, I take it, of the meeting --

A These are the official minutes.

Q Now, I ask you to look at those minutes, and point out to me in those minutes, where the minutes reflect that a direction was approved, authorizing you to take appropriate action to reduce the deficit?

MR. CELLER: Objection.

The document -- the minutes speak for themselves. It's either there or it isn't there.

MR. EDELMAN: I don't see it.

JUDGE ROSENBERG: Why don't you ask him, dies the --

MR. EDELMAN: All right.

JUDGE ROSENBERG: Do the minutes contain anything relating to --

MR. EDELMAN: Very well.

Q (By Mr. Edelman) I ask you to look at the minutes, Mr. D'Angelo, and ask, do the minutes contain anything concerning a direction by the Joint Board, to you, and to the Joint -- Chairman of the Joint Board, to take whatever means necessary to correct the deficit that existed?

A No, they don't.

Q Now, I would like to ask you another question.

Do you recall, during the meeting on the 28th, that the subject of Bayberryland came up in connection with the meeting?

A Yes.

Q Can you tell me what the discussion was at that meeting, in connection with bayberryland?

A The discussion was relative to studying the feasability of building a retirement village at Bayberryland.

Q And correct me if I'm wrong.

A preliminary report was made to discuss the feasability to buy, lease or rent property for a retiree center, and a motion was made to adopt a resolution to develop a portion of the land at Bayberry, for this purpose, and it was suggested that a committee be appointed to look into the matter, and this motion was seconded, and carried.

Is that correct?

A Yes.

Q Now, I would assume that the construction of a retiree center, would involve a certain expense by the Pension Committee, is that correct?

A A certain investment.

Q An investment and an expense, as well, isn't that correct?

A Not necessarily.

Q Well, you'd have to run it.

Wouldn't that be so?

A The concept of this is to build a -- an income producing, retirement villate, on property already owned by the Pension Committee.

Q Well, they would build --

It was actually to buy, lease or rent property for a retiree center.

It doesn't say anything about building it.

A Well, how would you do it if you don't build it?

What do you do?

You can't put tents up.

Q It says, a motion was made to develop a portion of the land, but it does not say that it was supposed to be an income producing property.

I take it, that's your testimony, is that correct, because it does not say so in the minutes?

A My testimony, Mr. Edelman, is that the proposal contained in that resolution is to look into the feasability of building a retirement center on property that is already owned by the Pension Committee, at Bayberryland, which would ultimately, when finished, be either rented or sold on a cooperative apartment basis, to retirees of the industry, to live out on that property.

Q Now, would it be fair to say that this was an expansion of the benefits offered by the Pension Committee?

A No.

Q You would not interpret it that way?

A No. Not as an expansion of the benefits.

MR. EDELMAN: I offer the document, Your Honor, for evidence, as General Counsel's Exhibit 9.

MR. GELLER: No objection.

JUDGE ROSENBERG: All right.

It is received.

(Whereupon, the above referred to was received and marked General Counsel's Exhibit 9 in evidence.)

MR. EDELMAN: Perhaps we can stipulate the admission of the December 3rd minutes?

MR. GELLER: Sure.

identification, Mr. D'Angelo, and ask, although you didn't sign it, did you see it and are you familiar with it?

A Yes, I am.

Q Was that letter sent out with your authorization, to patients, on April 30th?

A Yes.

Q The letter states that the dental facility will be closed until further notice.

Is that to indicate a temporary closure, or can you explain to me what was meant by that?

A It wasn't indicated to mean a temporary closing.

It was indicated to me, until some more definitive determination as to what to do with the physical facility was made.

Q When you say what you were going to do with the physical facility, was there a possibility that you were going to reopen it up at a future time?

A There may be a possibility of reopening it at a future time, when the income -- when the income to the fund is back up over the 35 or 40 percent decrease in income that the fund has had.

Q Have you -- Did you make any plans as to what you were going to do with the Clinic, in the interim?

A At this time?

JUDGE ROSENBERG: They're received.

MR. EDELMAN: From 9 through 12?

JUDGE ROSENBERG: 10 through 12.

(Whereupon, the above referred to were received and marked General Counsel's Exhibits 10-12 in evidence.)

MR. GELLER: I have some questions on redirect, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Geller) When you were asked five or so dentists out of the thirty, were not kept on, you gave a certain answer, which I will not repeat. You gave a reason.

Were there any other reasons for not keeping open the Dental Department, with five or so dentists out of the thirty?

If so, please state them now?

A We had the same consideration that we had had when we considered the phasing out aspects of it, as to maintaining an appearing, functioning department, and making judgments as to what to treat and what not to treat.

Q What's wrong with keeping, or what did you consider to be wrong in keeping an appearing, functioning -- or a department with all appearances functioning, with a number of dentists?

What's wrong with that?

A At the time, we considered the reaction of the participants to that -- to what appeared to be an existing benefit, that they were not able to obtain, would then cause repercussions, that we thought were beneficial not to have.

Q Was any consideration -- Was any consideration given to the relative advantage, either in quality or quantity, of retaining five dentists, as opposed to doing it in some other fashion?

A Yes.

We had some suspicions at that time on certain quality of the work that had been going on during the month of April.

Q Well, did you consider the difference between what it would take for Dr. Krauss' one dentist to do it, and what it would take for five dentists to do it?

A Well, the additional cost --

By having any dentist on, other than Dr. Krauss, would have meant, of course, additional expenses of operation, whereas Dr. Krauss is going to be there for a period -- a period of time, and would, by his doing it, would result in no additional cost.

Q Did you consider or weigh what additional benefit would be gained by keeping five on as distinct from just Dr. Krauss, and its value?

A Well, no overall benefit, other than just being able to do it a little quicker than Dr. Krauss, as one individual, could do it.

Q Now, with respect to the dental chairs and other items in the operatories, what have you done by way -- what have you done, if anything, by way of inquiring as to their disposition?

JUDGE ROSENBERG: Hasn't that already been gone through?

You asked him and he said that they had taken some --

MR. GELLER: Estimate.

JUDGE ROSENBERG: On Wednesday, taken some survey or quote or whatever --

THE WITNESS: Price quotes.

MR. GELLER: May I offer for identification, as Respondent's Exhibit --

JUDGE ROSENBERG: 18.

MR. GELLER: -- as Respondent's Exhibit 18, a memo from the Durable Dental Company, which purports to be the estimate referred to?

(Respondent's Exhibit 18 was received and marked for identification, of this date.)

JUDGE ROSENBERG: What's the date of it?

MR. GELLER: Dated May 10th, 1976.

Q (By Mr. Geller) Mr. D'Angelo, can you identify this

Alternate ways of reducing costs and benefits.

Against that background, let me ask you this.

If the medical department were reduced or eliminated, but let's say reduced, if the medical department were reduced, if its benefits were reduced, would that have any effect, and if so what, upon any other benefit level being offered?

A Well, by reducing or eliminating the medical department, we would increase the cost of the major medical benefit, because many of the tests and examinations that we perform in the medical department, are done pursuant to a private doctors request of his patient to go and have such-and-such a test done, and then that -- our member then comes to our medical department, and the test is performed there. X-rays, blood tests --

Q Can you give other examples?

A Almost any.

And orthopedic examination, x-rays, all, you know, whatever x-rays.

Q Well, if there were a barium enema or GI Series?

A Barium enema, GI Series.

Q Who pays for this?

A That's included within the cost of the medical department.

That's done in the normal course of the medical department's operation.

Q What if the individual would not come to the medical department, but would have it done elsewhere, what expense would there be, if any, to the Pension Committee funds?

A If it was done elsewhere?

Q Yes.

A And done as part -- major medical would have to pick it up.

It would be added to the cost of major medical.

Q Is it fair to say that if you climiated part of the medical department, you would -- the major medical costs would raise?

A Yes.

Q Now, the same question were regarded to Bayberry.

If you eliminated Bayberry, the services rendered at Bayberry, would that have any effect upon any other benefit level?

A Yes.

Well, the same thing may very well apply there, too.

Because Bayberry being a rest home, aftercare or extension, hospital -- longer hospital stays may occur, and all of which, you know, could possibly add to the increased cost of major medical.

Q In addition to the discussions on the 29th of April, that you had with the Chairman in Manhattan, relative to the closing of the dental department, in particular, were there other disucessions on this subject of reducing benefits in general, and dental department in particular, within the preceding few months?

A Yes.

There had been any number of discussions.

The number of them I can't recall.

But we had been --

MR. EDELMAN: Your Honor, I'm going to object to this point.

This is repetition of the direct examination.

MR. GELLER: I don't yield to the objection, but I have no intention of going into what those prior discussions consisted of.

I merely wanted to point out that there was, perhaps, undue emphasis on the 29th, and that there were prior discussions.

I have no further questions on this line.

JUDGE ROSENBERG: All right, overruled.

Q (By Mr. Geller) Now, do you know of any prior instances in which the Chairman of the Joint Industry Board, took action with respect to a benefit, that altered the cost or extent of that benefit, without consultation with any trustees on an official basis, that is?

A Yes.

Q Could you tell us about that?

A Yes.

Several years ago, I don't recall exactly when, the optical benefit had been rpoviding a single vision lens, within normal limits, as the part of the optical benefit. And because of many of the repercussions that we were having amongst the general membership, and people were paying for anything -- the cost of anything over and above a single vision lens, it was causing some repercussions.

The Chairman of the Joint Board then directed us to have the optical department provide a pair of glasses, whatever the glasses, as proscribed by the opthalmologist were.

As long as they were medically necessary and proscribed by the opthalmologist, the Pension Committee then absorbed that total cost.

Q What was that total cost, approximately, additional cost?

A I don't know offhand.

But, as an example of, you know, an extreme kind of case, a pair of cataract lenses may run 80 or 90 dollars, as opposed to $10.00 for a single vision.

Q Would it be possible to give an overall estimate as to what the additional expense was to the fund?

A I really couldn't.

Q Not even above a certain amount or below a certain amount, just for the sake of clarifying the record?

A I would say, it was a substantial increase.

Q Okay.

Now, in connection with the decision to close the dental department, when was the next -- rather, when did you inform any trustees about the final decision of the 29th?

A The next day.

Q Whom did you inform?

A I, personally, spoke to Mr. Minervini.

Q What did he say?

A He expressed that he concurred, and he felt that if that's the judgment we made,he agreed with it.

MR. GELLER: No further questions.

JUDGE ROSENBERG: Do you have anything further, Mr. Edelman?

MR. EDELMAN: Just a few, Your Honor.

RECROSS EXAMINATION

Q (By Mr. Edelman) About how many patients were treated at the Clinic during the last year, do you know?

A Patients?

Q Yes.

At the Dental Clinic.

BEST COPY AVAILABLE

A On an annual basis, I'd say, about 8,000.

Q About 8,000?

A Yes.

Q And how long has the Dental Clinic been in existence?

A Somewhat over twenty years.

1950, 1952, I'm not -- I'm not too sure which year it started. But it was 1950 or '52.

Q Now, on April 13th, when you contacted Mr. Minervini --

A April what?

MR. GELLER: Contacted him the next day, which would be April 30th.

MR. EDELMAN: What d d I say?

MR. GELLER: 13th.

Q I'm sorry, I meant April 30th.

Is Mr. Minervini a Local 3 trustee?

A He's an Employer-Trustee.

Q Did you contact any other trustees?

A I didn't -- I didn't outwardly contact them, but I did have occasion during the day to speak to one or two other trustees.

Q In the course of normal business?

A Yes.

Q And you informed them?

A Yes.

Q Do you recall who --

A Some of them were aware of it.

Q Do you know how they were aware of it?

A Their offices are in the building.

Q I see.

Which trustees would those be?

A Local 3.

Q Those are Local 3 trustees.

MR. EDELMAN: I have no further questions.

MR. GELLER: Nothing further.

JUDGE ROSENBERG: All right.

You may step down.

We'll take a recess for about five minutes.

(Whereupon, there was a short recess taken in the hearing.)

JUDGE ROSENBERG: On the record.

Mr. Geller, call your next witness.

MR. GELLER: I call Dr. Sidney Krauss.

Whereupon,

SIDNEY KRAUSS

called as a witness, was duly sworn and testified as follows:

JUDGE ROSENBERG: Be seated.

Give your fullname and address to the reporter.

THE WITNESS: Dr. Sidney, S-I-D-N-E-Y, Krauss, K-R-A-U-S-S.

211 Beach 144th Street, Rockaway Park, New York 11694.

DIRECT EXAMINATION

Q (By Mr. Geller) Dr. Krauss, what was your position with the dental department of the Pension Committee?

A Director for the dental department.

Q How long did you hold that position?

A A little in excess of ten years.

Q Have you practiced dentistry?

A I don't understand the question.

Q How long have you been a dentist?

A Thirty-six years.

Q Have you been an administrator during all that time, or have you been a practicing dentist, as well?

A I would have to go back.

You want Army service and everything else?

Q Just --

A I've been both.

Q Both, okay.

A Both, during that period.

JUDGE ROSENBERG: Bring it up to date now.

MR. GELLER: Do you want that history?

No.

JUDGE ROSENBERG: No.

Q (By Mr. Geller) Did there come a time in October, 1975, when there was a meeting concerning the possibility of a pay raise?

A Yes, there was.

Q Now, do you recall exactly when in 1975 that was, in October, '75?

A Either the third or fourth week of October, as usual.

Q Who was at that meeting?

A Mr. D'Angelo and Mr. Calascibetta, and myself.

Q What was discussed at that meeting?

A Well, each year, somewhere around the third or fourth week of October, it was anticipated that I would come up and ask for pay increases for the men on my staff. And I came up in October of 1975, and made the usual request, and at the same time was prepared to make recommendations in the way of increases for the individual dentists.

Q And what happened at this particular meeting?

A Well, if I may, Joe said to me, look, Doc, you know what the economic situation is. And unfortunately, this year we can't give any increases, and I might just as well tell you at this point, not only your professional staff, he said, but none of the administrators are going to get an increase. You'll have to bear with us, and that was it.

Q Was there any later meeting with any of the dentists on this subject?

A Well, I had prior meetings, as well.

During September, Dr. Goldberg had come into me and asked whether there was any chance of his getting an increase as an individual, and I told him he should know better, that we don't aware individual increases.

He came back as one member of a three man committee, the first week of October, and the three of them discussed the feasability of pay increases at that time.

Now, at that meeting, I made it known to the three of them, that although I was going up, I was rather apprehensive, because I knew what the economic situation was, I knew how the Pension-Welfare Fund was funded, and with the economic situation, I felt that they were probably running into financial difficulties, certainly, at that time, and in the future.

So, I told the men I was going to go up and make the usual request, but I didn't know whether anything would be done about it.

Q Did you report back, after your meeting?

A Of course, I did.

Q Did you report back after your meeting with Mr. D'Angelo and Mr. Calascibetta?

A Of course, I did.

When I came back down, I called the three men back in and spoke it over with them.

Then, I don't know if it was, I don't know, certainly within a period of a week or ten days during the break that we had between three o'clock and four o'clock. I sat in the lounge with the men, and I discussed it with some of the men.

I think there must have been about ten men there, as well.

Q Now, in the meeting that was earlier in October, who were the three dentists in addition to Dr. Goldberg?

A There were two in addition to Dr. Goldberg.

There was Goldberg and Dr. Nachbar, and at that time -- and I don't recall whether it was Dr. Fass or Dr. Goldsmith.

Q In the meeting after you spoke with Mr. Calascibetta, and Mr. D'Angelo, do you know the doctors, the dentists, who were present during that discussion?

A The same three.

Q And how many dentists were in the lounge?

A Oh, there must have been about ten men there at the time.

Q What did you tell the dentists?

A I told them exactly what I had told those three men.

Q Briefly, what was that?

A That because of the economic situation, no one would be getting increases, and I also suggested to them that it might not be as bad as it looked, because if the economic situation would improve, and knowing these people as I do, I anticipated, frankly, that somewhere along the line they'd try to make it up to them.

Q Did there come a time in late '75, or early 1976, when there was certain instructions given relative to expenditures in the dental department?

A Yes.

Normally, in the latter part of November, I would go upstairs and speak with Mr. D'Angelo and Mr. Calascibetta, and attempt to project the anticipated activity in the department for the coming year, and discuss the gross amount of supplies we might need in the department to keep it operating.

And I did this because, usually during the first week of December, in each year, you have the Greater New York Dental Meeting. And at this meeting, the manufacturers offer bonus deals to the profession.

Now, I made my bulk purchases at this time for the year, and if, for the sake of argument, a man was offering one free item, if you purchased five items, so you're getting six for five, you know, I was in a position to walk in and buy two hundred.

So, -- And I'm just using numbers now, Mr. Geller.

I'd be in a position to buy two hundred, because of the volume of work we were doing.

And instead of getting one free for every five, I might wind up with two or two and a half free for every five. And this cut down our ultimate cost of supplies in the department.

And this time -- this is the original question, I believe.

Q Yes.

A This year, when I went in to speak with Mr. D'Angelo, he said, look, he says, keep your purchases this year as low as you possibly can, and start using up the accumulated inventory that you have downstairs in your department.

Q Now, what did you do when you went to the convention, with regard to the purchase of supplies?

A Well, I kept them at a minimum.

And I started pulling the additional supplies I needed out of inventory.

Q Okay.

Do you recall how much you spent on dental supplies at this --

What was it, December convention?

A Yes, the December convention of 1975.

Q How much --

A About 15,000.

Q Do you have any slips to indicate, any receipts or records that would indicate the amount purchased?

A I believe I gave them to you.

Q Do you have any records that would indicate how much you spent on dental supplies in December, '75, and before '75?

A I have a monthly statement from the, originally, one major supplier, for 1973-74.

The same supplier for '74-75.

And the two major suppliers for the '75-76 meeting.

Q Can you produce from your files those records?

A I have them right here.

Q Okay.

All of these?

A I have seven copies of each.

Some of our invoices ran six, seven pages here. And here you have a compilation of all the information.

Q Okay.

Would you refresh your recollection by reference to these items, and tell us how much was spent in 1973 and 1974 and 1975?

A Usually, what would happen was the purchases were made, or the orders placed during the first week of December, and then predicated on the arrangements made with the manufacturer, and the supply house, we would get our deliveries primarily during the latter part of December and during the month of January.

Now, during December of 1973, from Central Dental Supply, we were billed for $6,635.66, for these supplies.

In January of '74, $13,378.98.

Q Which means that you purchased --

A A total of $20,000.00.

Q Is that how much you bought at the convention in '73?

A Yes. '73, yes.

Q How much did you buy at the convention in '74?

A $27,867.62.

Q How much did you spend on dental supplies at the convention in December, '75?

A $15,214.49.

Q What was the reason for the disparity between 1974 and 1975?

A Mr. Joseph D'Angelo gave me those instructions.

MR. GELLER: Your Honor, I'm not going to introduce these records into evidence, unless it is so desired.

The witness simply refreshed his recollection as to them.

If General Counsel wishes to look at them, would he please look at them and explain them to me.

Q (By Mr. Geller) Now, can you tell us what the situation was in the dental department, focusing on the latter part of 1975, and early part of 1976, in terms of the hours being given -- being worked by dentists, and any fluctuations in those hours?

A We were, during -- during the early part of '75, we were up around 760 or 770 manhours per week.

Q In what --

A Pardon me?

Q When was this?

A The early part of '75.

Q Okay.

A Then, through attrition, we lost something like 104 manhours.

And as was my custom, as I had been instructed to, oh, quite a few years ago, I started to put on additional manpower in order to make up the -- the lack that we needed to operate at the level they expected me to operate at.

Q Okay.

A So, I started putting additional men on.

I had put on about sixty man hours, and I then rehired Dr. Theodore Eiges, with another twenty hourse, which made it a total of eighty, and I sent a letter of notification for payroll purposes and everything else, up to Mr. Cassecibetta.

Q Before you get to that, after hiring Dr. Eiges, when did you hire him?

A March 8th.

With the understanding that he would start working on March 15th.

Q How many hours were being worked in the dental department by dentists, with the hiring of Dr. Eiges?

A With his hiring?

About 740.

Q Now, before you --

Withdraw that, please.

Now, had any dentists left in the latter part of 1975, early part of 1976?

A Yes.

Q Can you name them?

A I have a list, if I may refer to it?

Q Yes.

A September of '75, Dr. Leone, we lost sixteen hours.

January, '76, we lost Dr. Zaglin, twenty hours.

January 10th, we lost Dr. Fass, twenty-eight hours.

In the early part of '75, Dr. Weber, we lost eight hours.

Dr. Goldsmith, and I --

Excuse me for a minute.

Dr. Goldsmith was a very close and intimate friend of mine. Knew him, his wife, our kids went to school together.

Q Dr. Goldsmith is the doctor who died?

A Since deceased, that's right.

Q When did he terminate his connection with the dental department?

A I was compelled to terminate it about ten days after he actually left the department.

I took him off our books.

Q When was that?

A Oh, about the 15th of January.

Because I had received information to the effect that he was in a terminal illness at that time.

Q Now, there was hiring done at the beginning of 1976, is that not correct?

A I beg your pardon?

Q There was hiring of new dentists after the beginning of 1976, is that correct?

A Yes, yes.

Q Who was hired in 1976?

A Dr. Glass was hired, Dr. Wohlman was hired, Teddy Eiges was hired.

Q Okay.

Now, you hired Dr. Eiges on March 8th, I believe you said?

A That's right.

Q And there was a memorandum in that connection?

A Yes.

It was the usual memorandum sent upstairs.

Q What transpired in connection with that memorandum?

A I received a phone call from Mr. D'Angelo, on the morning of the 9th, asking me to come upstairs, he wanted to speak with me. And he said, Doc, you've rehired Dr. Eiges. That's right. He says, from now on, touch base with me before you attempt to hire -- the hiring of any more dentists to your staff.

So, I asked him what the story was, and he says, just operate at the level you're at now, and don't put any more men on. Period.

Q Do you recall exactly when this conversation took place?

A March 9th.

Q That's with Joe D'Angelo?

A That's right.

Q Now, when was the next time --

Please strike that.

Did there come a time that you received a telegram in connection with the Teamsters organizing?

A That was on March 15th.

Q What did you do when you got the telegram?

A I looked at it.

I was a little shocked and stunned, to tell the truth. And I walked out of my office, and as I entered the corridor, I bunked into Dr. Goldberg and Dr. Brunetto.

Do you fellows know anything about this.

Oh, forget about it, never mind, and I went upstairs to see Mr. D'Angelo, with the telegram, and I presented it to him.

Q What did Mr. D'Angelo say, if anything?

A He looked at it and he says, do you know anything about it. I says, no. He says, all right, he says. You leave it with me. He says, you know the rules of the ballgame. Stay out of this. I says, okay, and I went back down to my office.

Q Did he -- At that time, did he give you any more precise instructions as to what to do in response to the telegram, or not?

A Not in response to any telegram.

Q Okay.

A The only thing he said to me was, I'll get back to you and let you know, you know.

Q What was the next you heard about anything to do with the organization drive?

A Dr. Corliss walked into my office, I'm trying to recollect.

Monday was the 15th of March, wasn't it?

I believe it was.

Dr. Corliss came into my office on the 17th, and he walked in, and he says, look, I have to talk to you.

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I says, Ralph, do me a favor, no conversation.

And he says, Sid, understand, we've been friends for a long time, I have not signed any card for any Local, I never will sign a card for a Local, and there are eight or nine men here who feel as I do, and we have to know where we stand, and I have to talk to you.

I said, all right, Ralph, sit down. What's on your mind.

And he says, well, we don't know what our rights are, we don't know whether we have to join the organization or we don't. We don't know whether we can be pressured into joining the organization or not. We'd like to know what o ur position is.

So, I went over to my old file, and I pulled out a copy of this publication, a layman's guide to basic law under the National Labor Relations Act, and I asked him to give me a couple of specific questions and maybe I can help him out on it.

So, he asked whether they could be discriminated against by us, for not having taken part in this thing.

And I read the section, the appropriate section from here. Let me see. Page 20.

It also prohibits discrimination because an employee hasrefrained from taking part in such Union or group activity, except where a valid Union shop agreement is in effect.

Q What else did Dr. Corliss make a point of, that you had to refer to that booklet for?

A Let's see.

21, 24. Oh, a statement to force an employee to join or lose a job if the Union wins. Unfair labor organization to cause an employee to discriminate, or an Employer to discriminate.

They were afraid that they might lose their jobs. And so, I read these paragraphs to them.

MR. EDELMAN: Excuse me, Your Honor, is the witness using anything to refresh his recollection in connection with the testimony, aside from the labor guide?

THE WITNESS: No.

MR. EDELMAN: I was wondering about the slip of paper?

THE WITNESS: No. This is just to show me on which page these statements are.

MR. GELLER: If General Counsel wants to inspect anything the witness uses, he may feel free to do so.

THE WITNESS: No problem.

And he asked what's going to happen, if they sit down and negotiate, can they force us to join.

And I read all the appropriate answers to them.

Now, he then said to me, at the end of the discussion, he says, look, Sid, you should know something, and I want to tell it to you. He says, some of the men are taking the position that simply because you have received notice of the fact that they are organizing, that you are losing any control you might say over them regardless of what it is that they do.

So, I says, look, Ralph, again, I must read something to you. And I went to Page 21 here, and it says, this section does not limit the Employer's right to discharge, transfer or lay off an employee for genuine, economic reasons or for such cause as disobedience or bad work.

I said, if anybody asks you any questions, Ralph, that's the answer to it, and make sure they understand it.

Q Now, --

MR. GELLER: Will the record indicate that the witness has been referring to a booklet put out by the National Labor Relations Board, entitled, The Layman's Guide to Basic Law, and has been referring to it, and reading from it.

JUDGE ROSENBERG: I understand it's being revised, because it was somewhat misleading.

Q (By Mr. Geller) Now, I refer you to the parts that you read, and I call your attention to some markings made by a pen, either underlined or marks on the side.

A I made those.

Q Who made those?

A I made those many years ago.

Q When did you make them?

A I would say, about 1967.

MR. EDELMAN: Are you going to introduce it?

MR. GELLER: I don't --

MR. EDELMAN: If you're not going to introduce it, why bother to discuss the marks?

MR. GELLER: Okay. That's that.

I'm not going to introduce it. I see no point to that.

Q (By Mr. Geller) Now, subsequent to the Corliss meeting, did you report this discussion to anyone?

A Oh, the next morning, I went upstairs and I spoke with Mr. Joseph D'Angelo and told him about it, and --

Q Can you remember whatyou told him, if it's not just a repetition of everything you've testified to?

A Well, except that I made a point of telling him that Dr. Corliss had told me that the men felt I would no longer have a control over them. They could do whatever they wanted.

So, he says to me, look, keep your eyes open, and touch base with me before you make any definite decisions, he says, because it's a little too touchy for you to handle on your own.

Q Now, did there come a time when there was an incident involving yourself and Dr. Vierno?

A Well, that incident occurred on March 31st.

Q Okay.

Tell us what happened, please.

A I think that's the incident that was referred to by Dr. Vierno as the 24th, but that patient was never in the Clinic on that date.

It happened on the 31st.

This was a Wednesday, and Dr. Kobrin was acting in the capacity of an assistant to myself at the back desk, and trying to give appointments to a patient for, I believe, prosthetics. She was insisting that he give her appointments for the month of June, I believe, and he told her that policy of the department was such that he could not appoint her that far in advance. She said she was going to Florida on vacation, she'd be back, and she wanted to make sure they were set up so she could get her work done, because she'd been told the department is closing down.

They had a bit of a hassle at the back desk, and finally Dr. Kobrin came in to me and asked me to please go out and talk with her, which I did. And she kept telling me the same thing, and I asked whom it was who had told it to her, and she said, Dr. Vierno.

So, I asked Dr. Kobrin to come along with me, and the two of us went back to x-ray, where Dr. Vierno was, and

I told Dr. Vierno to stop starting rumors in that department, which were completely unfounded, because I wouldn't tolerate it. And Dr. Kobrin and myself walked away from him.

At about 3"30, I decided, because I had, in the meantime, heard from some of the girls that some of the other patients were asking the same questions, I decided to call all the doctors who were working that afternoon into the lounge, and at that time, I told all of them assembled that in my opinion, no such decision had been reached by anyone, that I did not have the authority to close down that department, and if anyone reached that decision, they would notify me through the proper channels, and then I would inform everyone else in the department who would be concerned, and that would be it.

But, until such time that I learned that there was a definite decision to close that department, I didn't want them harassing my patients.

Q What was the name of the patient who was in the middle of this Vierno incident?

MR. CELLER: I think the record may show the witness is checking his papers.

JUDGE ROSENBERG: That doesn't matter.

MR. CELLER: I would like to introduce this into evidence.

Dr. Vierno was very positive it happened on the 24th.

I cross examined him very specifically on this point, and this is relevant to what happened the next day, on April 1st.

It did not happen on March 24th.

If Dr. Vierno were here and would like to amend his testimony, we wouldn't have to go through this.

That patient was not appointed on the 24th.

It was March the 31st.

And our story is consistent, and Dr. Vierno's story is either not accurate for whatever reason, and it has that reference --

JUDGE ROSENBERG: That's for me to decide.

What real gravity is there, outside of credibility?

MR. GELLER: Only the effect that it had on the events of the subsequent day, April the 1st.

It was in response to this.

This was the straw that broke the camel's back.

The last incident before the Joe D'Angelo speech of April the 1st, the next day.

If -- I think we can --

JUDGE ROSENBERG: I wouldn't make a big to do about it.

THE WITNESS: I beg your pardon?

Q (By Mr. Geller) Dr. Krauss, --

A It was a woman.

Q You needn't go through the records.

A Yes, it was a woman.

Q Do you recall precisely what the date was of this incident, and speech to the dentists?

A It was about 1:45 on March 31st.

Q You're sure it wasn't March the 24th?

A I'm absolutely certain.

There's no question whatsoever in my mind.

Q Okay.

A I have the patient's chart here, if you want me to look for it.

We can establish it, because of professional entries on the chart.

But, she was there March 31st.

Q No, that won't be necessary.

What did you do in response to the Vierno incident, other than speaking to the dentists about rumors?

A Well, I went upstairs and I spoke with Mr. D'Angelo again, because I hadn't taken any action against Dr. Vierno of any sort,and I wanted for him to tell me what to do.

And he says, look, in view of what we know Dr. Corliss told you, and if this is what they're doing now, then perhaps I'd better come down and speak with them.

And by this time, it was getting to be rather late in the afternoon, and he was ready to go home, and he says

I'll get down to you tomorrow.

And the following day, he asked me to pick a decent time, and I says, somewhere around three o'clock, four o'clock.

He came down at approximately four o'clock, with Mr. Calascibetta, and this was April 1st, and he read a statement to the men in the lounge.

Q Now, aside from the statement of Corliss that you testified to, did you have any reason to believe that work was deteriorating in the dental department, as of April the 1st, 1976?

A Well, I had been checking through work tickets, as I normally did every day, and it seemed to me that in one case, specifically, too many restorations that this man had placed, were falling out after a short period of time.

Q How did this compare with any similar problems prior to, say, March 15th?

A Well, there is no man practicing dentistry that's perfect in every detail. It's an impossibility.

And just the same as you have failures with dentures or root canal work, you do have failures with individual fillings.

The only question which has arised -- which arises professionally, what is the percentile against the number of fillings you do, how many are falling out.

I found out in the case of one Dr. Falkin, that entirely too many were falling out.

Q Falkin?

A Rudy Falkin, F-A-L-K-I-N.

And I said nothing about it, because it was one individual, and it didn't mean that much, but I had notice of it.

Q You had what?

A I had notice of what he was doing.

Q Did Dr. Falkin have this problem with restorations prior to your discovery of it in March?

A The percentage wasn't that great.

I had other problems with him before, but not in reference to that.

Q Now, on the subject of communicating work rules, what was -- how did you communicate your work rules?

By work rules, I don't mean time in and time out, I mean the professional policies that the dentists would implement?

A When a man was hired, if he went into the operative dentistry section, he received a copy of a policy set-up by myself, and treatment, and that was first set up in 1970, I believe, and he was asked to familiarize himself with it, and he was given a copy of the standard abbreviations we used in the dental department to designate treatment.

Q What I'm asking you is this.

Perhaps we can just --

A Then, in addition to that, everytime we had a staff meeting, I went over every section in that department, in minute detail, and told them exactly what it was that was expected of them in their treatment of patients in that department.

Q Were work procedures gone into?

A Everything.

Prosthetics, crown and bridge, endodontia, or root canal work. Operative dentistry, surgery.

Q Did you have any personal contact with dentists individually, or in groups other than staff meetings?

A Of course, I did.

I'd be called into rooms at various times for various reasons.

They would ask my opinion as to what course of action to take. Whether it might be advisable to change Dr. Brunetto's diagnosis and come up with another diagnosis.

There were time when I called men into my office to ask them to straighten out, stop what they were doing, and get down to practicing decent dentistry.

This was an ongoing thing. It never stopped.

Q Did there come a time when there was some problem involving a Dr. Katz, and what was it?

A When I was going through the tickets and checking x-rays, on the morning of April 8th, I came across something which was strictly contrary to policy in the department, and had been done by Dr. Katz.

So, I called him into my office.

Dr. Brunetto was there. Dr. Calem was there. and I showed him the x-ray. And they all agreed that he had done something which no man in the department was supposed to do.

First of all, he had made a patch filling in a molar, and I could live with that, but he had left behind a silver filling, which had a tremendous amount of excess of silver filling material packed down into the tissue between the two teeth. And regardless of whether it was a good filling or not on the surface, my instructions to these men were that if they found fillings of this nature, whether there was decay around them or not, they were supposed to rip them out and replace them propely, so that there would be no excess material packed into that space, because it creates a tremendous number of periodontal problems, and we didn't have to have that in our department. And I advised Dr. Katz that I didn't care to see him do it again.

Q Okay.

Now, was that the end of that incident?

A With Dr. Katz, yes.

Q Did there come a time when you -- when there was trouble with Dr. Manford?

A Dr. Manford, I was given to understand, by the laboratory, because I knew -- no charge ticket had come through, in reference to his work, had done something which was contrary to policy, and I called Dr. Brunetto in on Monday morning.

Q What was the date of that?

A I saw Brunetto on the 5th.

Q Of which month?

A March.

No, April. I'm sorry, April 5th.

Q When was the Katz incident, if I may interject?

A Beg your pardon?

Q When was the incident with Dr. Katz, the date?

A April 8th.

I remember that date very well.

Q Now we're in April the 5th with Dr. Manford?

A No. No.

I called Dr. Brunetto into my office after receiving the call on the 5th, and I asked him what had happened on the 3rd, which was a Saturday.

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Now, as I recall, I had left at about 11:30 that Saturday. He told me that on Saturday, Dr. Manford had cemented in a crown which was supposed to fit beneath one of the clasps on an upper partial, or a lower partial, to be exact, and that when the crown had come back from the laboratory, it was impossible to seat both the crown and the partial in the mouth. And Dr. Manford had cemented the crown in anyhow, which is again, directly contrary to policy, because it meant we then had to cut the clasp and rest, the technical terms, from the existing partial, take new impressions, send it out to the laboratory, and have them repair the partial.

It seemed to me that it was unfair to expect the laboratory to do this work with no charge, simply because the dentist, you know, --

Q What basis is there for saying this was a commonly known rule?

Is there any basis?

A Of course.

This was something that was discussed at every -- every meeting, and they were told that if a restoration or casting, if you will, was no good, it was not to be cemented in the mouth at any time. Period.

Now, he had gone ahead and done that.

And I called him, and Dr. Goldberg, and Dr. Brunetto,

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into my office, and I asked them whether they knew that I had always insisted that if a casting not be any good, it not be cemented in the mouth, and they all agreed.

So, I asked Dr. Manford under those circumstances, how come you cemented this in on Saturday.

Q Dr. Manford was at this meeting?

A Yes.

Dr. Manford says, well, Dr. Brunetto told me to.

Dr. Brunetto says, I never told you to.

I said, gentlemen, don't catch me in the middle. Just remember this. So long as I'm Director, you don't do this again. And I left it right there.

Q Okay.

A Now, again, because of the nature of what had occurred that morning, I tried to reach Joe.

I don't know whether he was in Manhattan or at a meeting, but at about 12:30 I left the Clinic, I caught a plane to Florida, because I was on vacation that day, and I didn't get back until the 19th of April.

Q Okay.

Now, when was the next time that you had any trouble with the work of the dentists?

A When I came back on the 19th, I attempted to speak with Joe about the occurrences of the eight, and again he wasn't available.

I went back downstairs in my own office, and I started going through all the work tickets and the bite-wing x-rays that had been taken during my absence.

While going through some of these work tickets, I saw something that puzzled me on one of Dr. Vierno's, because if I were to believe what I saw in front of me, he had done a tremendous amount of work in a very short period of time.

So, I asked for the patient's chart. And sure enough, the entry had been made that he had done it that way. And I was a little puzzled, so I took the x-rays out of the folder, and I took a look at the x-rays. And at that point, I was a little flabbergasted with what I had seen.

So, I called Dr. Brunetto, Dr. Goldberg and Dr. Kobrin into my office, and I showed them the two pictures that I had taken out from the series of x-rays for this patient. And I asked him to point out the decay, which was evident in some of the teeth on these x-ray films. And I don't know which one of them, I think it was Dr. Kobrin, started laughing. He said, who missed now. You know.

Well, I says, look, Sidney, just, you know, let me know what you find.

So, the three of them examined these x-rays, and they came up with the information that they could see cavities in the upper and lower teeth on the left side of the mouth, and none on the right, as I recall.

Yes. Dr. Goldberg said there were distal caries on the lower right five, and possibly on the seven, Brunetto said that there was a DO on the lower right five.

Dr. Kobrin said the lower right five.

My x-rays indicated, and by omission they informed me of the fact that they found no dental caries in the left side of the mouth.

And I have here the ticket that was signed by Dr. Vierno, saying he had done two, three surface fillings in the lower teeth of the left side of the mouth, despite the fact that four dentists could find no evidence of decay.

I couldn't understand why a man would grind perfectly sound teeth and put fillings in them, and this to me was a little way out.

So, I had to speak with Joe about --

Q Joe D'Angelo?

A Joe D'Angelo, about what had happened on the 8th, before I left, and here it was the 19th, and I went up to speak with him on the 20th.

JUDGE ROSENBERG: This is when, April?

THE WITNESS: Yes, sir.

I went up to speak with him on the 20th about what

I had found with Dr. Vierno.

And he says, look, isn't there any chance there's a mistake.

I says, no.

He says, what would you normally do.

I says, throw him through a window.

He says, well, he says, play it cool, go back downstairs. He says, keep a close eye on him, see what he's doing, and see if he's attempting to set a pattern here.

I went back downstairs and I started going through some of the other work tickets I have of Dr. Vierno's.

I think I came up with about, let me see, one, two, three, four, five, six other instances, and the dates on these tickets, that is the date on which the work was done, April 19th, March 30th, March 30th, April 7th, March 24th, and April 6 --

Q All of 1976?

A All 1976.

And I still, as of this moment, this is the first time Mr. D'Angelo knows that I have this evidence in front of me, and that I have come up with on Dr. Vierno.

Q Yes?

A I went up to speak with him on the 20th, as I say, and those are the instructions he gave me.

And no action was taken at that time, because the compilation of these other tickets, in going through the records, in addition to all the record keeping I had to do for the period I had been out of the department while I was on vacation, was such that I didn't finish this up until, maybe, oh, the 26th, the 27th of the following week, -- the 26th or 27th, which was the following week.

Q In other words, you didn't report back to Mr. D'Angelo about your findings, is that correct?

A Never did.

This is the first he hears of it.

Q Did you have plans at that time to bring it to Mr. D'Angelo's attention?

A I most certainly did.

Q What, if anything, prevented you from doing it?

A Thursday, the 29th of April, we were closed.

Q Now, in connection with the Vierno x-rays, did you take any steps with regard to the patients involved, as to any procedures of checking them out?

A I haven't taken any steps whatsoever, nor would I until I had a discussion with Mr. D'Angelo about the subject.

Q Let me ask you this.

Perhaps I misunderstood you previously.

Didn't you call in the patient to check to see whether the work had been done?

A Well, after the first one that I found, where these two, three surface restorations had been placed, I had the patient called back, and we took x-rays of the area, and sure as all hell, those were the two fillings he had put on those teeth.

Q On the subject of the relibability of those x-rays, isn't it true, Dr. Krauss, if I may cross examine you, that x-rays don'e always reveal the decay?

MR. EDELMAN: I think that is kind of leading.

MR. CELLER: Okay.

It's leading the other way.

THE WITNESS: Mr. Celler, you just opened the door.

MR. EDELMAN: Why don't you ask him generally about the relibability?

Q (By Mr. Celler) What was the relibability of x-rays with regard to these specific --

A Despite any testimony that Dr. Hesse may have given, there is documentary evidence, in textbooks, whether they be advanced or basic, in dentistry.

There are publications of the Eastman Kodac Company, and all of them tell you that the easiest thing in the world to discern on a dental x-ray film is decay. They tell you how to find it and where to look for it. And they tell you why it is so -- of such importance to use it, for finding decay between the teeth.

If you want me to read from them, I'll do so.

Q What do you -- do you --

Are you relying now on any particular publications?

A I'm saying, all three.

Two standard textbooks and one publication.

Q Why don't you read the names and authors into the record?

JUDGE ROSENBERG: I think that's enough.

MR. CELLER: Okay.

Q One more question.

Let me ask you this.

Is there a distinction between the location of decay, relative to the accuracy of the x-rays?

Are the x-rays equally accurate as to all decay, or are they less accurate in some instances?

A No, no.

You have to understand, you have to understand that you have a three dimensional teeth, which is projected as a one dimensional, or a two dimensional picture on a piece of film.

Now, depending upon the angle at which the x-ray is taken, you may throw a shadow across an area of decay which will make it invisible on the film.

We're talking now about taking what are known as periatal films, which are used primarily for detecting pathology in surrounding tissue, rather than cavities.

The bitewing filling is taken at an angle of approximately plus 5 degrees above the horizontal angle so you get a very flat trajectory of the ray, and you can see decay under fillings if it exists, and you can see the normal, unbroken, even, white line of the enamel crown of a tooth, where decay does not exist.

Q How many different x-rays did you examine of Dr. Vierno's patients of the teeth that were filled?

A Six full series of pictures to find out which teeth were involved, that he had designated as having filled.

Q How many patients did this cover?

A Six.

Q Was any reason offered at the time as to why Dr. Vierno might be doing this?

A I couldn't understand why he might.

Certainly, it wasn't for the good of the patient.

In speaking with Joe about it, he says, well, what would this mean as far as the patient's treatment is concerned.

Well, if the patient has four cavities, and he's going to fill seven teeth that don't, that means instead of four visits, the patient needs eleven.

He says to me, look, this is an area I don't want to get into, but because of what we heard from Corliss, what happened on the eight, what you're telling me now about Vierno, you'd better get the men into your office and try to straighten them out a little bit.

Q What did you do along those lines?

A I called in the crown and bridge and prosthetics section on the 21st, and I told them that I did not want to see any man becoming involved in anything that might extend the number of appointments a patient might need for completion of treatment.

And I also told them at the time that I was fully aware of each man's capabilities, predicated on prior work he had done in the department, and I told them to do me that very great favor and not become involved in any such procedure.

So, Dr. Calem says, well, it's all well and good to speak in generalities, what are you talking about.

I says, Sidney, if you're going to take a shade, take the right shade.

Q Shade?

A Shade.

You know, if you're going to make the facing, acrylic facing on the crown, against a patient's own teeth, if the patient needs a light shade, don't use black.

That means, after it comes back from the lab, it's no good, it has to go back to be burned out, has to be re-done, you have to give the patient another appointment. It was along these lines.

The next day, I called the operative dentistry section in, and we were fortunate in that Dr. Wohlman, who teaches the science of dental materials at NYU College of Dentistry was there. And the two of us got into a discussion of the anticipated life of each type of restorative material that's used in dentistry. And its anticipated life as a filling in the mouth providing the preparation of the tooth to receive it has been done properly.

We have filling materials today which, by far and large, should be good from five to eleven years.

I told the men, because of the discussion I had had with him, the only fault we could find with any restoration that might be lost after two or three weeks, would be predicated on the fact that the man who placed it, hadn't done what he was supposed to do in the preparation of the tooth to receive that filling material.

I let it go.

Q Was that the sum and substance of your meetings of April 21st and 22nd, with the dentists?

A That's right.

Q Did there come a time when there was another incident involving Dr. Manford?

A Yes.

On April 28th, somewhere about five o'clock in the evening, I received a call from the laboratory, telling me that they had a similar instance with Dr. Manford, where it was impossible to make the crown required, because the partial denture didn't fit the model, and the partial denture had not been in the mouth at the time the impression was taken. And they were going to send the whole thing back to me.

So, I had it in my possession the first thing on the morning of the 29th, and I called Dr. Coldberg, and Dr. Calem and Dr. Manford into my office, and I says, Jules, are you trying to provide me into firing you.

He says, what's the matter now.

I says, the lab just sent this back. How in God's name can they make a crown to fit under a clasp on this partial, when the partial doesn't even fit the cast. Didn't you take the impression with the partial in position.

He says, no, it kept falling down.

I looked at him. Because there were four clasps on the partial. Dr. Calem and Dr. Coldberg looked at him as though he's some kind of nut. Because partials get loose from time to time, and they do fall down from time to time.

And as Dr. Nesse knows, it take a minute or two to tighten up a clasp and it stays in place.

Why Dr. Hanford should have used that for an excuse, to take an impression without a partial in position, I don't know. But he did.

And then he says, oh, this is getting to be damn ridiculous. Turned around and stormed out.

I turned around to Dr. Goldberg and Calem and said, what am I supposed to do with this man.

And Dr. Goldberg started to tell me, at that time, he says, look, Sid, this is not directed against you.

I said, what are you talking about.

He said, well, organizing.

I said, don't talk to me about organizing. This you should know. This is not directed against you. We don't want you to lose your job. You know, it's nice working here.

I says, look, don't give me that, because I've taken this thing as a very, very personal thing, ever since it first started, because from the minute I got that telegram, I knew you gentlemen had absolutely no confidence to me, and you looked for someone else to help you out in your dealings with the Pension Committee.

Since I've been the one to go pushing for your increases in salary every year, and the first time, because of an economic situation, there's nothing doing in the way of an increase, you go out and you organize; if that's what you want, you go ahead. And I said, I'm going to have to thank you for this, too. Because there's going to be a certification election here, and if you gentlemen certify any organization to represent you, it means you're off my back, I don't have to have a damn thing to do with your welfare and with you.

And I left it right there.

Q Going back a bit, there was some testimony earlier that this second incident involving Hanford was concerned with a partial that was missing, that the laboratory subsequently found, and that put an end to it?

A When I spoke with them, you know, I said, send the partial back with the model. The girls says, we don't have the partial. I said, you better take a look. I held on to the phone for two or three minutes. She said, yes, we have it, it was in a different bag.

Q Did that solve the problem stemming from the Hanford incident, the finding of the partial?

A No. No, it didn't, because when we attempted to put the partial denture on the model of the mouth, that was made from the impression, he sent along to the laboratory, it was impossible to put it on.

Q In other words, were there any missing pieces?

A No.

Q Wait.

When you reviewed the matter with Goldberg and, I think, Calem, you said?

A No.

There were no missing pieces.

What had happened was this. When he took the impression of the mouth, he had two tremendous bubbles in the impression material. And when the model was poured, these bubbles, or voids in the impression material were reproduced as big lumps of stone.

The material from which we make our models. And with the lumps of stone sticking up off the model, it was impossible to put the partial back on it.

Q Before March the 15th, 1976, what were -- what, if anything, would you do by way of reviewing the work done by dentists?

A I used to check every bitewing x-ray that was taken in the department, and these were taken immediately on the visit immediately prior to anticipated completion of treatment.

Q That's x-rays.

What else?

A Right.

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I'd spotcheck the work that was being done as patient were leaving the operative section. I'd walk around into the crown and bridge rooms. I'd walk into the prosthetics rooms.

Q Were there work tickets?

A I beg your pardon?

Q Were there work tickets to review?

A Well, you can -- the work tickets for crown and bridge and prosthetics, were of no great significance, because I used to check the appointment sheets each day, and so long as I saw all the appointment spaces were filled, I knew the man was working.

Q Didn't you discover something was wrong with the work of either Katz, Vierno or Hanford, from their work tickets, or am I mistaken?

A No, just Dr. Vierno.

Just Dr. Vierno, when I picked up the fact that it was highly improbably to me that he would do as much work as he did, in the one unit time.

Q In what section does Dr. Vierno work?

A Operative dentistry.

Q What was your practice with respect to work tickets in operative dentistry, before March the 15th, 1976?

A I always checked the work tickets and the bitewing x-rays.

If I saw anything out of the way, in my opinion, I would ask one of the girls to bring in the chart so I could examine the chart.

Q Before March the 15th, 1976, had you ever taken action against dentists, when you found that work was done deficiently?

A I certainly did.

Q Can you run down, very quickly --

JUDGE ROSENBERG: Isn't that enough of an answer, "I certainly did?"

Q (By Mr. Celler) On one or two occasions, or more often than that?

A No, no.

Q Nothing detailed, just --

A Nothing in detail.

During 1975, oh, maybe a dozen.

Q Okay.

Now, moving into another area of some significance, can you describe in professional terms, dental terms, the condition of patients who had visits remaining as of April the 30th, 1975?

More particularly, if I can rephrase it, what effect did the shutdown have as of April 30th, '76, upon patients who had visits remaining in the dental department, in the various departments?

A Operative dentistry wasn't very bad.

And I say that because policy there was not to put temporary filling materials into teeth, if you can avoid it. But to do a complete filling.

Q Well, let me--

A So, this meant that, if they had been in for a visit, the chances are they had a permanent filling in the tooth.

Although, they may not have had all the teeth that needed restoration taken care of, at least those that were taken care of, were completed.

Q What treatment had been given to the teeth that do not need restoration, prior to the actual day of the filling?

A Treatment to the individual tooth?

Q Yes.

A There was no treatment given to a tooth prior to filling it.

Q About how many temporary fillings --

Rather, what percentage of the untreated cases in operative dentistry, had temporary fillings, as opposed to permanent fillings?

A I wouldn't know.

Q Can you approximate it?

A No way. No way.

We filled about --

Q Was 50 percent temporary fillings?

A Oh, Lord, no.

Maybe one or two percent temporary fillings.

Q That's what I'm asking, for an approximation.

A Yes.

That is a number off the top of my head.

I don't have any figures.

Q How long did the temporary fillings that you used last?

A A good temporary filling, unless a patient bites into something very hard and cracks it out, is god for, maybe, six months, a year.

Q Okay.

In the other departments of the -- of dentistry, what effect in dental terms, could be expected in terms of the comfort of the patients, as a result of the shutdown?

That is, did the shutdown of the crown and bridge, root canal, endodontia, crown and bridge, prosthetics, what conditions did it leave the patient in, I'm asking, in dental terms, and particularly in terms of paid, comfort, and the sort?

A All right.

In prosthetics, no paid or discomfort, certainly. They might be without the teeth they needed in their mouth, but --

MR. EDELMAN: They couldn't eat well, but the could sleep well.

Q Describe it in terms of who would need what.

What further implements?

A Well, you had patients waiting for full dentures, you had patients waiting for full dentures, you had patients waiting for removal of bridges.

Q What was the effect upon not treating them immediately?

A No great effect, other than the loss of the use of the appliant.

Crown and bridge was something else.

Q Stay with prosthetics now.

A Yes.

JUDGE ROSENBERG: What's the purpose of this?

MR. GELLER: Simply to show that the shutdown, as it was effected, didn't leave anyone dangling.

JUDGE ROSENBERG: Is that an issue before me?

MR. GELLER: Well, only indirectly, if it will be alleged that the shutdown was precipitous.

Otherwise, I don't think -- I think we've completed it, anyway, or most of it.

I will move on.

Q (By Mr. Geller) Now, since the beginning of May, what work have you been doing in the dental department?

Nothing in detail.

A Nothing in detail?

JUDGE ROSENBERG: Isn't that uncontradicted, that he's taken over the patients, the work that the other dentists had performed, or would have, but for the closure?

MR. GELLER: That's true.

MR. EDELMAN: It's not contradicted, Your Honor, by any testimony offered by General Counsel.

JUDGE ROSENBERG: Right.

MR. GELLER: All right.

Q (By Mr. Geller) Did you meet Dr. Elger on April the 30th or May the 1st, in connection with --

A Eiges?

Q Eiges, that's correct.

A Yes.

Q -- in connection with picking up --

A I think the two of us came up in the elevator together on that Saturday morning.

JUDGE ROSENBERG: What date was this? April 30th, did you say?

MR. GELLER: I'm not sure whether --

THE WITNESS: I think it would be May 1st, because we closed down on Thursday, the 29th of April. And April has but thirty days. So, Saturday was May 1st.

Q You're sure it was the Saturday following the closing?

A I believe so.

Q That was May 1st?

JUDGE ROSENBERG: It was the day following the day of closing.

MR. CALLER: Yes.

JUDGE ROSENBERG: All right.

Q Did you have any conversation with Dr. Figes?

A Yes.

Other than good morning, Teddy, I don't believe so.

Q Did you say anything about the Teamsters, or about he could drive a truck, or any words to that effect?

A No, sir, I did not.

Q Now, previous to that, did you, at any time, after March 15th, indicate to Dr. Goldberg, or Dr. Galen, or anyone, that you had been stripped of your powers by the people upstairs, or words to that effect?

A No.

I had never been stripped of my powers by anyone.

I do recall at the end of the conversation, in my office, relative to Dr. Munford and Dr. Goldberg telling me what he did, I said to him, you know, I'm out of this thing, I have no authority in it, there's nothing I can do about it one way or the other. Nor would I be permitted to.

Now, if this was interpreted as being stripped of my powers, --

Q Did you say anything to that effect?

A Good Lord, no.

Q Okay.

Moving to the job that Dr. Brunetto performed, could you describe very briefly what your conception of his job was?

A Dr. Brunetto's job was purely and simply that of assisting me in the professional area of the operation of the department.

Q What administrative powers did he have?

A None whatsoever.

As a matter of fact, --

Q Did you ever communicate the limitations of his powers to the dentists?

A Of course, I did.

Q In what fashion and when?

A Well, I think you have there a notice that was put on the bulletin board, very definitely and specifically in reference to that.

Where the doctors were going to Dr. Brunetto, they went to Bernie Rauch, Sylvia Grubert.

Q Now, --

Now, how would you put your relationship with dentists, both before March 15th, 1976 and after March 15th, 1976, in ten words or less?

A I'll be honest with you; until Dr. Goldberg sat on the stand, I thought we were pretty good friends.

I had a very cordial relationship with the men.

It's true, I didn't bother with some as much as I did with others, and I socialized with none of them. For my own, personal reasons.

But, Dr. Goldberg and myself were good for a couple of laughs everyday. we attempted to enjoy ourselves in the department.

I never insulted any of them publicly, that's for sure.

Q Were you in the habit of being called a martinette, or something of that sort?

A I told the men very distinctly, if I recall, at the March, 1975 meeting, --

Q Staff meeting?

A Yes.

-- that, if you'll permit me, Your Honor, that any one of them had the right to walk into my office and call me a son-of-a-bitch whenever he saw fit, and as long as he did he work properly, no action would ever be taken against him because of his personal opinions.

Q It's also been suggested here that there's a wild

JUDGE ROSENBERG: On the record.

Do you have any cross examination of this witness, Mr. Edelman?

MR. EDELMAN: I do, Your Honor.

JUDGE ROSENBERG: Go ahead.

CROSS EXAMINATION

Q (By Mr. Edelman) Dr. Krauss, is it true that raises are awarded to the dentists inthe Clinic on a group basis, rather than an individual basis?

A I can't answer the question that way, Mr. Edelman.

Each year, I was given a certain maximum amount that could be awarded to the dentists.

The individual increases were given in two groups.

One had an annual anniversary, if you will, in December, with another one in April.

Q Were these increases given to all the dentists?

A Usually. Usually.

There may have been one or two who were not granted an increase each year, but that was only in reference to two men on the staff.

Q Who would they have been?

A We had a Dr. Schiff, and we had a Dr. Weber, who were giving us, maybe, seven or eight hours a week, and they understood they were there on a courtesy basis, and they also anticipated that they would receive no increases, let the others go.

So, by attrition, and rehiring, and attrition and rehiring, whenever, at any one point in time, you always have the best group you ever had.

There's no -- no restriction on the fact that it might have been a far superior group two years from now. I wouldn't know.

But, certainly, wouldn't be any worse.

Q In other words, the group of dentists that you employed when the Clinic closed down, was what you would consider to be a good, competent group of dentists, would that be a fair statement?

A Yes, I would say so.

JUDGE ROSENBERG: Was your statement that it couldn't be any worse?

THE WITNESS: I wouldn't permit it to be any worse, Your Honor.

Q (By Mr. Edelman) Your method of running a Clinic was to employ high level, competent dentists?

A As best as I could, yes.

Q And you would be satisfied with nothing less?

A That's right.

That's me.

You know, --

Q Now, you did give some testimony concerning Dr. Viemo?

A That's right.

Q And you indicated that you had suspected that he was doing fillings on teeth that didn't need fillings.

Is that correct?

A I didn't suspect it.

I'm damn sure of it.

Q It was your opinion, then, your positive opinion, that this was so?

A As verified by Dr. Goldberg, Dr. Kobrin and Dr. Brunetto.

Q Now, would you consider this to have been an intentional act by Dr. Vierno?

A I don't know how you could call it anything else.

Q So, then, your answer is, yes?

A Yes. Yes, sir.

JUDGE ROSENBERG: Why would a dentist want to do a thing like that?

THE WITNESS: I'll be damned if I know, Your Honor.

It's been bugging me ever since.

Q (By Mr. Edelman) That's my question.

A I can't possibly conceive of any reason for it.

Forgive me, if I may, at this point, transgress.

Dr. Hesse was on the stand at the earlier part of this week, and to him, too, it was inconceivable that a dentist would do something that was intentionally and

Q Did you speak to him about that?

A Only on one occasion.

Q Did his attendance improve after that?

A No, it didn't.

Q But you didn't speak to him any further on it?

A There was no time to, because the department was closed.

Q Were there any other dentists that you suspected of intentionally injuring their patients, or intentionally performing unnecessary work?

A No.

Again, as Dr. Nesse expressed himself, and as I wholeheartedly agree with his opinion, I can't understand why they should.

Q You didn't suspect that Dr. Vierno's work in this regard was movivated by anything in connection with the Union organization, did you?

A I had noidea whatsoever.

Mr. D'Angelo and myself speculated as to the possible reasons for it.

Q I'm not interested in speculation at this point.

A That's about as far as it went.

Q Now, on March 15th, you received the telegram from Local 277, demanding recognition, is that correct?

A That's correct.

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Q Then you went up to speak to Mr. D'Angelo about that, is that correct?

A That's correct.

Q And your testimony was that Mr. D'Angelo looked at the telegram and said, well, you know the rules of the ballgame, stay out of it?

A That's right.

Q Now, do you know what Mr. D'Angelo meant by that statement?

A I think I do.

Q Can you tell me?

A Not to become involved in any discussion of what they were organizing for, not to threaten them, not to cajole them, not to become involved at anything.

Q Had you ever been involved in any Union campaign of this type?

A Well, the men had organized in 1966, after I have just joined the, I don't know how you might say it, after I just received the appointment as being Director, and at that time, there was a Mr. George Schuck, who was my immediate superior, and when he received notice of the fact that the men had organized, I think it was with the Federation of Physicians and Dentists, something of that nature, he called me up to the third floor and he said, Doc, sit down, I got some information for you.

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You know, I'm giving you a running account, don't ask me to repeat verbatim at this time, please.

But, in effect, what he said to me is, look, you're a dentist, stick with your dentistry. Don't become involved with these men, because this is a Union activity, and regardless of what comes up, we are the ones who will become involved in negotiations and discussions. So, you just stay away from it, mind your own damn business, stay in your office.

Q When Mr. D'Angelo received a telegram from you, did he ask you at the time that you gave the telegram, did he ask you anything like, what do you know about this, Dr. Krauss, or anything of that nature?

A Yes.

He said, when did you first know about this thing.

I said, when I got the telegram a couple of minutes ago.

Q Did he ask you, do you know who's involved in this?

A No, no.

Q Did he ask you how come, being the administrator and dealing with these individuals, you had no knowledge of it prior to this?

A No.

Q I didn't hear that.

No?

Relations Board, you can get this publication, read it.

Q You indicated that you did take it personally when you received the telegram?

You felt the men were doing this --

A That's exactly right.

Q That would be a fair statement?

A Yes, I took it on a very personal basis.

Q Would it be a fair statement that the idea that the men were unionizing, attempting to unionize, angered you?

A No.

The thing that angered me, I certainly would have no objection to their organizing, and I couldn't see anyone in our organization objecting to it.

But, I knew that these men had received increases every year, that I was the one who was wearing six or seven hats in the organization, and I was the one who had the burden of going to Mr. D'Angelo to ask him to get increases, and in the one year when I come down empty handed, all of a sudden I find that these men have no longer any confidence in me, they disregard every damn thing I've done with them before.

I sat down and explained at great length to them, in October of '75, why they would not be getting increases, and I find that all of a sudden they walk away from me as an individual.

And this is what hurt me.

Q What emotion would you say you felt as a result of the unionization?

A An emotion?

Q Yes.

A Personal hurt.

Anger with them, no. No.

Q Now, when you were speaking with Dr. Corliss, was anybody present with you at the time?

A No.

Q You were alone?

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A We were alone.

Q Did you ask Dr. Corlis whether or not he knew who the card signers were?

You did not?

A No.

Q Did you ask anybody whether they had signed the card?

A Whether they had specifically signed cards, no.

Q Did you ask any one whether or not they were involved with a Union?

A Well, I think I -- I think the extent of the discussion I had with them, and you would have to know the complete personalty of Dr. Alcalay, and I never called him Dr. Alcalay, by the way.

I think on one instance I said to him, hey, Yussella, you too, are you involved?

So he says to me I'm involved with me family, I got no time for anything else.

Q Did you --

Go ahead.

A But I may have said it to someone else. I doubt it very much.

Q Did you know who the card signers were?

A No.

Q When is the first time you found out who the card signers were?

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A It was Monday or Tuesday when all the cards were presented in evidence.

Q You had no knowledge before than?

A No.

I had an idea, but it was only speculation on my part.

Q How did you --

A I knew, of course, that Dr. Corlis hadn't signed, because he had said so.

Q Well, now, prior to the clinic closing down, is it your testimony you didn't have any knowledge as to who had signed and who had not signed?

A Specifically?

Q Yes.

Q You made no inquiries at all?

A Only with Dr. Alcalay, and as I left my office, I think I told you that I said to Dr. Goldberg and Dr. Brunetto, you fellows know anything about this?

And then I said oh, forget about it, let it go, and I kept on going, went up to Mr. Joseph D'Angelo's office.

MR. EDELMAN: I have no further questions, Your Honor.

JUDGE ROSENBERG: Anything further?

MR. GELLER: No further questions.

JUDGE ROSENBERG: You may step down.

(Whereupon, this witness is excused.)

NE

Kotch

FORM NLRB-501
(2-67)

FORM EXEMPT UNDER
44 U.S.C. 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring

DO NOT WRITE IN THIS SPACE
Case No. 29-CA-4987
Date Filed 5-5-76

JOINT INDUSTRY BOARD OF T 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer THE ELECTRICAL INDUSTRY [illegible] PENSION COMMITTEE, JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

b. Number of Workers Employed Approx. [illegible]

c. Address of Establishment (Street and number, city, State, and ZIP code) 158-11 Jewel Ave., Flushing, N. Y. 11365

d. Employer Representative to Contact Menagh, Trainor & Rothfeld

e. Phone No. 532-3850

f. Type of Establishment (Factory, mine, wholesaler, etc.) Dental Clinic

g. Identify Principal Product or Service Dental Care

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about March 15, 1976 the above-named Employer, in violation of § 8a(1) and (3) of the Act, discriminated against and interfered with the rights of the dentists employed by the Employer at its dental clinic, by, among other things, harassing, intimidating and threatening said dentists and by discharging them on or about April 30, 1976, all because of their actions on behalf of and their membership in the undersigned union.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
Local 277, International Brotherhood of Teamsters

4a. Address (Street and number, city, State, and ZIP code) 27 Union Square West, New York, N. Y. 10003

4b. Telephone No. 691-1020

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Cohn, Glickstein, Lurie, Ostrin & Lubell
By Elliott D. Shriftman — Attorneys
(Signature of representative or person filing charge) (Title, if any)

Address 1370 Avenue of the Americas
New York, New York 10019
757-4000 (Telephone number)
May 4, 1976 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

A495

Kettle

FORM NLRB-501
(2-67)

FORM EXEMPT UNDER
44 U.S.C. 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
FIRST AMENDED
CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring

DO NOT WRITE IN THIS SPACE
Case No. 29-CA-4959
Date Filed 5-27-76

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer [illegible] CENTER, JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

b. Number of Workers Employed Approx. 30

c. Address of Establishment (Street and number, city, State, and ZIP code) 158-11 Jewel Ave. Flushing, N.Y. 11365

d. Employer Representative to Contact Menagh, Trainor & Rothfeld

e. Phone No. 532-3350

f. Type of Establishment (Factory, mine, wholesaler, etc.) Dental Clinic

g. Identify Principal Product or Service Dental Care

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) and (5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (be specific as to facts, names, addresses, plants involved, dates, places, etc.)

A. Since on or about March 15, 1976 the above-named Employer, discriminated against and interfered with the rights of the dentists employed by the Employer at its dental clinic, by, among other things, harassing, intimidating and threatening said dentists and by discharging them on or about April 30, 1976, all because of their actions on behalf of and their membership in the undersigned union.

B. Since on or about April 30, 1976, the above-named Employer terminated its office and general clerical employees employed at its dental clinic following the unlawful discharge of its dentists. By the Acts and conduct as aforesaid the Employer violated Sections 8(a) (1) and (3) of the Act.

C. The foregoing acts of the Employer were also in violation of Section 8 (a) (5) of the Act in that they were designed and calculated to dissipate the majority status of the undersigned union which, at the time of said terminations had been designated as the collective bargaining representative of the dentists employed at the employer's dental clinic.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Local 277, International Brotherhood of Teamsters

4a. Address (Street and number, city, State, and ZIP code) 27 Union Square West, New York, New York 10003

4b. Telephone No. 691-1020

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (to be filled in when charge is filed by a labor organization)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Cohn, Glickstein, Lurie, Ostrin & Lubell

By Elliott D. Shriftman, Attorneys
(Signature of representative or person filing charge) (Title, if any)

Address 1370 Avenue of the Americas
New York, New York 10019
757-4000 (Telephone number)
May 25, 1976 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

COPY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

JOINT INDUSTRY BOARD OF THE ELECTRICAL
INDUSTRY AND PENSION COMMITTEE, JOINT
INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY,
AND TRUSTEES OF THE PENSION HOSPITALIZATION
AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY,
AS NAMED IN APPENDIX A

and

CASE NO. 29-CA-4989

LOCAL 277, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

COMPLAINT AND NOTICE OF HEARING

It having been charged by Local 277, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Charging Party, that Joint Industry Board of the Electrical Industry and Pension Committee, Joint Industry Board of the Electrical Industry, herein called Joint Industry Board has engaged in, and is engaging, in certain unfair labor practices affecting commence as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq. herein called the Act, the General Counsel of the National Labor Relations Board herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. (a) The Charge in this proceeding was filed by the Charging Party on May 5, 1976, and served by registered mail upon Joint Industry Board on or about May 6, 1976.

A497

(b) The First Amended Charge in this proceeding was filed by the Charging Party on May 27, 1976, and served by registered mail upon Joint Industry Board on or about May 28, 1976.

2. Joint Industry Board is a tax-exempt association doing business in the State of New York having its principal office and place of business located at 158-11 Jewel Avenue, County of Queens, City and State of New York where it is, and has been at all times material herein inter alia, continuously engaged in maintaining and administering Trust funds established pursuant to collective bargaining agreements and declarations and agreements of trust by and between Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, and various Employees and Employer Associations engaged in commerce and in industries affecting commerce, including Broadway Maintenance Corp. and Fluorescent Maintenance Association, for the purpose of providing inter alia dental, medical, hospitalization, pension and other related benefits for the employees covered by said collective bargaining agreements and declarations and agreements of trust.

3. (a) To effectuate the administration of the various employed benefits described above in paragraph 2, the Joint Industry Board has established the Pension Committee of the Joint Industry Board of the Electrical Industry, herein called the Pension Committee.

(b) At all times material herein the individuals named in Appendix A, attached hereto and made a part hereof, have been Trustees of the Pension Committee.

(c) Joint Industry Board and the Pension Committee and its Trustees named in Appendix A, herein collectively called the Respondent are, and at all times material herein, have been affiliated enterprises with common officers, directors and trustees, and constitute a single integrated enterprise; the said directors and trustees formulate and administer a common labor policy affecting the employees of Respondent.

4. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business operations, received payments in excess of $50,000 from Employers and Employer Associations engaged in commerce including *inter alia* Broadway Maintenance Corp. and Fluorescent Maintenance Association.

5. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its medical and dental clinics and other business purchased and caused to be transported and delivered to its place of business, dental and medical equipment and supplies and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its place of business in interstate commerce directly from states of the United States other than the state of New York.

6. Respondent, is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

7. The Charging Party is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

8. (a) Dr. Sidney Krauss and Joseph De Angelo, are and have been at all times material herein, the Director of the Dental Clinic and the Director of Health Services, respectively, agents of Respondent, acting on its behalf, and supervisors thereof within the meaning of Section 2(11) of the Act.

(b) Dr. Paul Brunetto, the Assistant Director of the Dental Clinic, is, and has been at all times material herein, an agent of Respondent, acting on its behalf.

9. All the dentists employed by Respondent at its Flushing, New York dental clinic but excluding all other employees, guards and supervisors as defined in Section 2(11) of the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

10. On or about March 14,1976, the Charging Party commenced an organizational campaign among Respondent's employees in the unit described above in paragraph 9.

11. On or about March 15, 1976, a majority of the employees of Respondent, in the unit described above in paragraph 9, designated and selected the Charging Party as their representative for the purposes of collective bargaining with Respondent and at all times since said date, the Charging Party by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining.

12. On or about March 15, 1976, the Charging Party requested Respondent to recognize it as the exclusive collective bargaining representative of Respondent's employees in the unit described above in paragraph 9, and requested Respondent to bargain collectively with it as the exclusive collective bargaining representative of Respondent's employees in the unit described above in paragraph 9, with respect to rates of pay, wages, hours of employment and other terms and conditions of employment of such employees.

13. On or about March 15, 1976, Respondent refused, and since said date has continued to refuse, to recognize and to bargain collectively with the Charging Party as the exclusive collective bargaining representative of Respondent employees in the unit described above in paragraph 9,

14. (a) On March 17, 1976, the Charging Party filed a petition in Case No. 29-RC-3343 for an election to determine whether a majority of Respondent's employees in the unit described above in paragraph 9 wished it to represent them for purposes of collective bargaining within the meaning of the Act.

(b) On April 21, 1976, the Regional Director for Region 29 issued a Decision and Direction of Election in Case No. 29-RC-3343.

(c) On May 13, 1976 Respondent's Request for Review of the Regional Director's Decision was denied by direction of the National Labor

Relations Board citing Tropicana Products Inc. 122 NLRB 121.

A representation election was conducted on May 21, 1976 in which Respondent challenged the ballots of all the voters.

15. On or about various dates presently unknown during the months of March and April 1976, Respondent, by Dr. Sidney Krauss, its Director of the Dental Clinic, agent and supervisor, interrogated its employees concerning the employees' membership in, activities on behalf of, and sympathy in and for the Charging Party.

16. On or about March 31, 1976, and on various other dates presently unknown during the months of March and April, 1976, Respondent by Dr. Sidney Krauss, its Director of the Dental Clinic, agent and supervisor, and by Dr. Paul Brunetto, its agent, warned and directed its employees to refrain from becoming or remaining members of the Charging Party, and to refrain from giving any assistance or support to it.

17. On or about March 24, April 1, April 5, April 22, April 23 and April 26, 1976, Respondent by Dr. Sidney Krauss, its Director of the Dental Clinic, agent and supervisor, and by Joseph De Angelo, its Director of Health Services, agent and supervisor, harassed its employees, by accusing them of starting rumors, of engaging in sabotage, of performing inadequate work and subjecting them to stricter and closer supervision than they therefore were given.

18. (a) On or about various dates presently unknown during March and April 1976, and May 5, 1976 Respondent by Dr. Sidney Krauss, its Director of the Dental Clinic, agent and supervisor declared to its employees that selection of the Charging Party would be useless and that the Charging Party would be unable to secure any benefits for them.

(b) On or about May 5, 1976, Respondent by Dr. Sidney Krauss, its Director of the Dental Clinic, agent and supervisor declared to its employees that should employees fail to vote for the Charging Party in the election

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described above in paragraph 14(b), the Respondent would reopen its dental clinic which it had closed on about April 30, 1976 as described below in paragraph 19, and that the employees would be better off with a labor organization affiliated with the AFL-CIO.

19. On or about April 30, 1976, Respondent ceased the operation of and closed its dental clinic.

20. On or about April 30, 1976, Respondents discharged the following named dentists:

Dr. Joseph Alcalay
Dr. Paul Brunetto
Dr. Herbert Buchholz
Dr. Sidney Calem
Dr. Ralph Corliss
Dr. Theodore Eiges
Dr. Rudolph Falkin
Dr. Martin Garfield
Dr. Felix Glass
Dr. Gus Goldberg
Dr. Milton Goldsmith
Dr. Benjamin Gould
Dr. Monty Greenwood
Dr. Hyman Grossman
Dr. Lester Katz
Dr. James Kennedy
Dr. Sidney Kobrin
Dr. Robert Kramer
Dr. Seymour Levine
Dr. Jules Manford
Dr. Lawrence Miller
Dr. Sidney Miller
Dr. Irving Nachbar
Dr. Edgar Nash
Dr. Gerald Nesse
Dr. Stephen Rosen
Dr. Morris Ross
Dr. Paul Schiff
Dr. Joseph Vierno
Dr. John Warren
Dr. J. Wohlman

21. On or about various dates presently unknown during the month of May, 1976, Respondent discharged the following named employees of the dental clinic:

Barbara Bernstein
Phyllis Chenrick
Sheryl Furman
Clair Gallagher
Sylvia Grubert
Sharon Hutcherson
Joan Kershak
Pam Levy
Airlia Paul
Bonnie Rauch
Billie Reinhart
Sylvia Sporn
Sherry Strauss
Helen Thompson
Leanne Williamson
Rita Casey
Donna Gardenfeld

22. Since the date of the discharge of the employees as described above in paragraphs 20 and 21, Respondent has failed and refused to reinstate or offer to reinstate, said employees to their former or substantially equivalent positions of employment.

23. Respondent discharged and thereafter failed and refused to reinstate its employees as described in paragraphs 20, 21, and 22 and ceased

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the operation of and closed its dental clinic as described above in paragraph 19, because the employees named in paragraph 19 joined and assisted the Charging Party, and engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection.

24. Respondent engaged in the acts described above in paragraphs 15 through 23 in order to undermine the Charging Party and to destroy its majority status among the employees in the unit described above in paragraph 9.

25. By the acts described above in paragraphs 13 and 15, through 23 and by each of said acts Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

26. By the acts described above in paragraphs 19 through 23 and by each of said acts, Respondent discriminated and is discriminating in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby engaging is and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

27. By the Acts described above in paragraphs 13 and 15 through 24 and by each of said acts, Respondent refused to bargain collectively and is refusing to bargain collectively with the representative of its employees, and thereby engaged in, and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

28. The acts of Respondent described above in paragraphs 13 and 15 through 23 occurring in connection with the operations of Respondent, described above in paragraphs 2 through 6 have a close, intimate, and substantial

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relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 19th day of July, 1976 at 11:00a.m. at 16 Court Street, fourth floor, in the Borough of Brooklyn, City and State of New York, and consecutive days thereafter until concluded, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement Of Standard Procedures In Formal Hearings Held Before The National Labor Relations Board In Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so, all the allegatinns in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 7th day of June, 1976.

Samuel M Kaynard

Samuel M. Kaynard
Regional Director, Region 29
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

APPENDIX A

TRUSTEES

ALFRED P. MINERVINI
Chairman

GEORGE W. KLEINKNECHT
Treasurer

THOMAS VAN ARSDALE
Secretary

GEORGE SCHUCK, JR.
Trustee

• • •

HON ROBERT F. WAGNER
Public Member

• • •

EMPLOYER REPRESENTATIVES

JAMES ANDREWS
ALLEN D. FISCHBACH
D. BERT HARING
EFREM A. KAHM
THEODORE KAISH
GEORGE W. KLEINKNECHT
JOHN J. MARCATO
ALFRED P. MINERVINI
CHARLES SALZHAUER
HERBERT TIPPERMAN

EMPLOYEE REPRESENTATIVES

JOSEPH CHALOUPKA
HARRY J GAVIN
WALTER INESON
JOHN KROMER
FRANK MONTEMAGNO
CHRISTOPHER PLUNKETT
GEORGE SCHUCK, JR.
FREDERICK STEIN
HARRY VAN ARSDALE JR.
THOMAS VAN ARSDALE

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 29

-----------------------------------X

JOINT INDUSTRY BOARD OF THE
ELECTRICAL INDUSTRY AND PENSION
COMMITTE, JOINT INDUSTRY BOARD
OF THE ELECTRICAL INDUSTRY, AND
TRUSTEES OF THE PENSION
HOSPITALIZATION AND BENEFIT PLAN
OF THE ELECTRICAL INDUSTRY, AS
NAMED IN APPENDIX A

Case No. 29-CA-4989

and

ANSWER

LOCAL 277, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMERICA.

-----------------------------------X

Respondents, JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY and PENSION COMMITTEE, JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY, and TRUSTEES OF THE PENSION HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY, as and for its Answer to the complaint in the above entitled case, alleges and states as follows:

1. Deny that a charge was ever filed or served upon "Trustees of the Pension Hospitalization and Benefit Plan of the Electrical Industry" and objects to the issuance of a Complaint against the said Trustees.

2. Deny that any of the Respondents are or have been "doing business" whether described in that form or in another form at any place in the complaint.

2a. Deny the words "Employees and" at line 8 of the paragraph 2 of the complaint are correct.

3a. Deny the allegations in paragraph 3(a) of the complaint.

A506

3b. Deny that all the individuals named in Appendix A to the complaint and referred to in paragraph 3(b) thereof are or have been Trustees of the Pension Committee.

3c. Deny the allegations in paragraph 3(c) of the complaint, and deny that the reference to Respondents as "Joint Industry Board", whether in this paragraph or elsewhere, is correct.

4. Deny the allegation in paragraph 5 of the complaint that "goods and materials valued in excess of $50,000 were transported and delivered to its place of business in interstate commerce directly from states of the United States other than the state of New York".

5. Deny the allegations in paragraph 6 of the complaint.

6. Deny the allegations in paragraph 8(a) and 8(b) of the complaint, except admits that Dr. Sidney Krausse was Director of the Dental Department and that Krausse and Joseph D'Angelo are supervisors.

7. Deny the allegations in paragraph 9 of the complaint.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the complaint.

9. Deny the allegations in paragraph 11 of the complaint.

10. Deny knowledge or information sufficient to form a belief as to the date alleged in paragraph 12 of the complaint.

11. Deny the allegations in paragraphs 13, 15, 16, 17, 18, 23, 24, 25, 26, 27 and 28 of the complaint.

WHEREFORE, Respondents demand that the complaint herein be in all respects dismissed.

Dated: New York, N. Y.
June 16, 1976

DONALD F. MENAGH
Attorney for Respondents
130 East 40th Street
New York, N. Y. 10016

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

JOINT INDUSTRY BOARD OF THE
ELECTRICAL INDUSTRY AND PENSION
COMMITTEE, JOINT INDUSTRY BOARD
OF THE ELECTRICAL INDUSTRY

Employer

and

Case No. 29-RC-3343

LOCAL 277, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Gary Kendellen, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The petition names the Joint Industry Board of the Electrical Industry, herein called the Joint Board, as the employer of the unit of professional dentists sought herein. At the hearing, the attorney for the Joint Board denied that it was the employer of the employees sought, claiming that the real employer was the Pension Committee of the Joint Board, herein called the Pension Committee. The Petitioner thereupon amended the petition to name the Pension Committee.[1]

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[1] The attorney for the Joint Board refused to participate on behalf of the Pension Committee, and a subpena was directed to said Committee for production of books and records, returnable on the adjourned date. They were not produced nor did any representative of either the Joint Board or Pension Committee appear on the adjourned date.

NATIONAL LABOR RELATIONS BOARD

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The record reveals that the approximately 30 dentists sought work in a dental clinic which services members of Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO. The clinic occupies a portion of the medical building wherein Local 3 members receive all types of medical treatment provided by Local 3. Several of the dentists testified that they use supplies and equipment which originated outside the State and some of their patients live outside the State of New York. In addition, the hearing officer received into evidence a contract between the Fluorescent Maintenance Association and Local 3, which provides inter alia that the employer members of the Association agree to participate in and make contributions on behalf of their employees to Local 3's pension, hospitalization, and benefit plans, and that the Joint Board shall administer said plans, the cost of said administration being borne by the employers in the industry. The contract was signed by 12 employers, some of whom, like Broadway Maintenance Corp. are directly in commerce on an individual basis, as well as through their memberships in the Association.

Although the contract provides that the Joint Board shall administer said funds, the record also reveals that the employees in question are paid by the Pension Committee which, according to the representation of the attorney for the Joint Board, files its own exempt business income tax returns.

In view of the above evidence, and in light of the non-participation in the hearing by either employer, I conclude that the Joint Board and the Pension Committee constitute a single entity for the purposes of the instant proceeding. Thus, the contracts in evidence indicate that the Joint Board is charged with administration of the funds, but also that the employees are paid by an entity known as the Pension Committee. At the most then, if the Joint Board does not directly hire and set terms and conditions of employment of the employees, it has delegated such authority to the Pension Committee.

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Accordingly, I find the Joint Board and the Pension Committee to be a single employer.

The Employer contends, in a post-hearing brief, that the clinic is not engaged in commerce because it is a free clinic and is neither a non-retail or a retail enterprise. I find no merit to this contention. The clinic is operated primarily to render medical services to employees working under Local 3 contract with electrical employers engaged in commerce. The Joint Fund was set up to collect and administer the employer contributions and it, in turn, set up the Pension Committee. Inasmuch as the clinic is an integral part of the benefits program provided by the Joint Fund for employees in the electrical industry, and the money to operate same derives from employers in commerce, it is engaged in commerce.[2]

The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.[3]

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All the dentists employed by the Employer at its Flushing, New York dental clinic, excluding all other employees, guards and supervisors as defined in the Act.

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[2] *The Permanente Medical Group*, 187 NLRB 1033; *Miami Inspiration Hospital, Inc.*, 175 NLRB 636.

[3] Inasmuch as the Petitioner admits employees to membership and exists for purposes of dealing with employers concerning wages and working conditions of employees, I find it to be a labor organization.

A51C

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Local 277, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 16 Court Street, Brooklyn, New York 11241 on or before April 28, 1976. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, N. W., Washington, D. C. 20570. This request must be received by the Board in Washington by May 4, 1976.

DATED: April 21, 1976
at Brooklyn, New York

Samuel M Kaynard

Samuel M. Kaynard
Regional Director, Region 29
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

A512

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

---x

JOINT INDUSTRY BOARD OF THE ELECTRICAL
INDUSTRY AND PENSION COMMITTEE, JOINT
INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY,

Employer,

- and -

Case No. 29-RC-3343

LOCAL 277, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Petitioner.

---x

REQUEST FOR REVIEW

The Employer requests the Board to review Region 29's Decision and Direction of Election of April 21, 1976.

The grounds for review are:

1. That a substantial question of law or policy is raised because of (a) the absence of, or (b) a departure from, officially reported Board precedent.

2. That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

I

The Board Has No Power To Treat An Entity As The Employer Of A Group Of Employees, When It Is Not Their Employer.

Region 29 named as the Employer an entity which does not employ the employees petitioned for, the dentists working in a dental clinic, after the Petitioner's motion to correct the name of the Employer was granted.

In a vain attempt to obtain Board jurisdiction, Region 29:

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1. Lists the Employer as "JOINT INDUSTRY BOARD OF THE

ELECTRICAL INDUSTRY AND PENSION COMMITTEE, JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY", and

2. Finds the Joint Industry Board and the Pension Committee of the Joint Industry Board to be a single employer, even though they are not a single employer (Tr. 5-6) and no evidence shows otherwise.

The Hearing Officer granted the Petitioner's motion to change the name of the Employer from Joint Industry Board of the Electrical Industry to "Pension Committee of the Joint Industry Board of the Electrical Industry" (Tr. 6, 10-11). Clearly, the Joint Industry Board was removed as a party during the hearing and was put back in after the hearing, even though it does not employ the employees petitioned for.

II

The Board Cannot Find Interstate Commerce To Exist When The Employer Does Not Engage In Commerce At All.

The dentists work in a free clinic, which does no business. Region 29 posits commerce upon the clinic's being "an integral part of the benefits program provided by the Joint Fund (sic) for employees in the electrical industry and the money to operate same derives from employers in commerce". Region 29 cites The Permanente Medical Group, 187 NLRB 1033; and Miami Inspiration Hospital, Inc., 175 NLRB 636, neither of which is in point.

In Permanente, "the record clearly shows that the Employer is engaged in a business for profit..." and further shows that during the year preceding the hearing the Employer received revenues in excess of $500,000 and met the $50,000 indirect inflow test. In the instant case, the Employer is not "engaged in a business for profit".

In Miami Inspiration, the Board held that "the Employer is operated, realistically speaking by these two profit making corporations" because the management of the mining corporations also managed the hospital and the corporations formerly operated the hospital directly; and most patients were corporate employees, but some patients merely resided in the area. In the instant case, it is not alleged that the electrical contractors who make contributions themselves manage the dental clinic or the Pension Committee, nor did they ever operate the clinic directly, and the clinic takes no money from any patients.

The Board should not stretch Permanente and Miami to cover all free clinics.

III

Section 2(13) Is Inapplicable Here.

"Health care institutions" are institutions for medical treatment. The Pension Committee's medical clinic is diagnostic only. Section 2(13) does not appear to include dental care. In any event, a "health care institution", like any other business, must be in commerce for the Board to have jurisdiction.

Since the Board lacks jurisdiction, the issue of the extent to which dentists are independent contractors rather than employees need not be explored.

Dated: New York, New York
April 26, 1975

Respectfully submitted,

MENAGH, TRAINOR & ROTHFELD

By: Norman Rothfeld
Norman Rothfeld

Attorneys for Employer
Office & P. O. Address
130 East 40th Street
New York, New York 10016
(212) 532-3850

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

TELETYPE

REGION 29
NLRB
BROOKLYN, N. Y.

RE: JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY AND PENSION COMMITTEE, JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY, 29-RC-3343

EMPLOYER'S REQUEST FOR REVEIW OF REGIONAL DIRECTORS DECISION AND DIRECTION OF ELECTION IS HEREBY DENIED AS IT RAISES NO SUBSTANTIAL ISSUES WARRANTING REVIEW. SEE TROPICANIA PRODUCTS, INC., 122 NLRB 121 BY DIRECTION OF TH E BOARD.

GCB

✓

MARIO LAURO JR.
ASST. EX.SEC.
NLRB
WASHINGTON, D. C.

5/13/76
3:40 p.m.
SG:DB

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PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION

OFFICIAL EXHIBIT NO. GC4B

Disposition
Identified ____
Received ✓
Rejected ____

In the matter of [illegible]
Date 7/19/76 Witness ____ Reporter [illegible]
No. Pages

July 2, 1976

Hon. Samuel Kaynard
Regional Director
Region 29
National Labor Relations Board
16 Court Street
Brooklyn, N. Y. 11241

RE: PENSION COMMITTEE, J.I.B.
Case No. 29-RC-3343

Dear Mr. Kaynard:

We have been notified of a proposal relative to the withdrawal of the Petition in the above-captioned case.

We object to withdrawal of the Petition under the circumstances, notwithstanding our pending challenges and objections.

The basis for objection is that Petitioner is also Charging Party in 29-CA-4989, upon which a Complaint has issued. In the Complaint, an 8(a)(5) violation is alleged in apparent contemplation of a request for a bargaining order.

Respondent's position is that Petitioner filed its charge well before the election and thereafter did not object to the election within the allotted time or, if we are correct, at all. It appears to us that a bargaining order cannot issue upon these facts, and we are opposed to any attempt by Petitioner or anyone else to erase the course of conduct adopted by Petitioner or to make belated objections in oblique and unpermitted fashion.

The foregoing is without prejudice to whether the election should have been held or, it having been held, whether it may be given legal effect for any of a number of reasons.

Very truly yours,

DONALD F. MENAGH

BY: ____________
Irvin Geller

IG/er

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

JOINT INDUSTRY BOARD OF THE ELECTRICAL
INDUSTRY AND PENSION COMMITTEE, JOINT
INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

Employer

and

CASE NO. 29-RC-3343

LOCAL 277, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

Petitioner

ORDER PERMITTING WITHDRAWAL OF PETITION

WHEREAS pursuant to a petition filed on March 17, 1976 and a Decision and Direction of Election issued on April 21, 1976, an election by secret ballot was conducted on May 21, 1976, in a unit of all dentists employed by the Employer at its Flushing, New York, dental clinic but excluding all other employees, guards and supervisors as defined in the Act; and

WHEREAS, on May 5, 1976, the Petitioner filed 8(a)(1) and (3) charges in Case No. 29-CA-4989 alleging, inter alia, that the Employer discharged the dentists on April 30, 1976, because of their membership in and activities on behalf of Petitioner, and simultaneously filed a request to proceed with the election previously directed; and

WHEREAS, the Tally of Ballots served upon the parties at the conclusion of the election showed the following results:

Approximate number of eligible voters	31
Void ballots	0
Votes cast for Petitioner	0

RC [illegible]

✓

labor organization 0

Valid votes counted 0

Challenged ballots 29

Valid votes counted plus challenged
ballots 29

Challenges are sufficient to affect the
results of the election

WHEREAS, on May 25, 1976, the Employer filed Objections to the Election alleging as follows:

> 1. The Dental Department of the Pension Committee, Joint Industry Board of the Electrical Industry was discontinued prior to May 21, 1976 for an indefinite period of time. The conduct of an election under these circumstances is *ultra vires*.
>
> 2. In view of the indefinite closing of the Dental Department, none of the former employees who participated in the election were eligible to to vote. Therefore the election should not have been conducted.
>
> 3. There was an unfair labor practice charge filed against Employer by Petitioner after the Direction of Election issued but substantially prior to May 21, 1976. The charge was related to the closing of Employer's Dental Department. The existence of the charge, and the dissemination of information as to its existence and substance, had the natural effect of inclining voters to support the charge, in the hope of personal gain thereby, by voting for Petitioner. In making this objection at this time, Employer does not know how many voters were actually prejudiced in this manner.

WHEREAS, on May 27, 1976, Petitioner filed a first amended charge in Case No. 29-CA-4989 alleging that the Employer discharged its office and clerical employees at the clinic and engaged in other acts designed and calculated to undermine the majority status of Petitioner; and

WHEREAS, on June 7, 1976, the undersigned Regional Director issued a Complaint and Notice of Hearing in Case No. 29-CA-4989 alleging that the Employer violated Sections 8(a)(1), (3), and (5) of the Act by engaging in the above-cited conduct; and

WHEREAS, thereafter by telegram of June 29, 1976, the Petitioner requested permission to withdraw the petition filed in the above-captioned case ; and

WHEREAS, the Employer, when advised of the withdrawal request herein, indicated its objection on the ground that the Election had been held, the Petitioner had failed to file objections to the conduct of the election and that such failure constitutes a waiver to any bargaining order;

NOW THEREFORE, the undersigned Regional Director, having duly considered the matter and having determined under the circumstances herein that the request should be granted particularly since all the ballots cast in the election were challenged, and the ballots have not been opened and counted, and a determination of the eligibility of said voters is dependent upon the results of the unfair labor practice proceeding, so that no determinative election has been conducted;

IT IS HEREBY ORDERED that the Petitioner's request to withdraw the petition filed herein be and it hereby is, granted with prejudice. Any petition filed by the Petitioner within six months of the date of this Order will not be entertained unless good cause is shown to the contrary.

Dated at Brooklyn, New York this 2nd day of July, 1976.

Samuel M. Kaynard

Samuel M. Kaynard
Regional Director
Region 29
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

A520

Application for Membership

LOCAL UNION No. 277

Affiliated with I. B. of T.

6C #3
[illegible] 4/1/76
[illegible] Rec.

Ledger No. 31462

Date of Application 3/17/76

Name GLASS FELIX
Last First Initial

Social Security 123-14-1721

Address 146 E. Rockaway Rd.
Mailing Address

City HEWLETT N.Y. Zip 11557

Date of Birth 1 31 22
Month Day Year

Home Phone FR 4 6200

Salary and/or Commission

Employer's Name J.I.B. PENSION COMMITTEE

Employer's Phone

Occupation DENTIST

Employer's Address 158-11 JEWEL AVE

City FLUSHING N.Y. Zip 11365

Original Date of Employment JAN 1976.

Recommended by AJD.

Initiation Fee $ 100 Dues $ 10 month. Approved by

Previous Employer Self

Were you ever a member of a Union? No

Address 145 E. Rockaway Rd. HEWLETT N.Y. 11557

If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

I further agree to make every effort to attend meetings and will pay all dues and assessments levied in accordance with the I. B. of T. Laws. It is understood that should it be hereafter discovered I have made any misstatements as to my qualification for membership that I be disbarred from all benefits provided by this Union. It is further understood and agreed that there will be no money refunded on this Application.

265

Signature Felix Glass

Application for Membership

LOCAL UNION No. 277

Affiliated with I. B. of T.

6C #5a
[illegible] 4/19/76
[illegible] Rec.

Ledger No. 31461

Date of Application MARCH 19, 1976

Name ROSEN SIGFRED E
Last First Initial

Social Security 150-30-5019

Address 104-40 QUEENS BLVD.
Mailing Address

City FOREST HILLS Zip 11375

Date of Birth DEC 17 1937
Month Day Year

Home Phone 897-9674

Salary and/or Commission 20 HRS - [illegible]

Employer's Name J.I.B.-PENSION COMM.

Employer's Phone

Occupation DENTIST

Employer's Address 158-11 - JEWEL AVE

City FLUSHING AVE Zip 11365

Original Date of Employment MARCH 1974

Recommended by AJD

Initiation Fee $ 100 Dues $ 10 month. Approved by

Previous Employer

Were you ever a member of a Union?

Address

If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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S. E. Rosen A521

Application for Membership

LOCAL UNION No. 277

Affiliated with I. B. of T.

[illegible] 7/1/76
[illegible] Rec

Ledger No. 31463

Date of Application Mch 30/76

Name EIGES THEODORE
Last First Initial

Social Security 276-10-7612

Address 8-71-24B GRAND CENTRAL PKWY City FLORAL PARK NY Zip 11005
Mailing Address

Date of Birth 4 26 23 Home Phone SA-9-8347 Salary and/or Commission 20 HRS $250
Month Day Year

Employer's Name J.I.B. PENSION COMM Employer's Phone Occupation DENTIST

Employer's Address 158-11 JEWEL AVE City FLUSHING NY Zip 11365

Original Date of Employment Recommended by AJD

Initiation Fee $ 100 Dues $ 10 month. Approved by

Previous Employer Were you ever a member of a Union?

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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285

Signature Theodore Eiges

Application for Membership

LOCAL UNION No. 277

Affiliated with I. B. of T.

60 50
[illegible] 7/1/76
[illegible] Rec

Ledger No. 31460

Date of Application 3/22/76

Name ROSS, MORRIS D
Last First Initial

Social Security 081-10-19[illegible]

Address 2 YERCHERIN LANE ROSLYN HEIGHTS, NY Zip 11577
Mailing Address City

Date of Birth 8 17 14 Home Phone 516-484-02[illegible] Salary and/or Commission
Month Day Year

Employer's Name J.I.B. PENSION COMM Employer's Phone 541-[illegible] Occupation DENTIST

Employer's Address 158-11 JEWEL AVE City FLUSHING N.Y. Zip 11365

Original Date of Employment Feb 1972 Recommended by ASD

Initiation Fee $ 100 Dues $ 10 month. Approved by

Previous Employer Were you ever a member of a Union?

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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285

Signature Morris D Ross DDS

6C5d
[illegible]
[illegible]

Application for Membership
LOCAL UNION No. 277
Affiliated with I. B. of T.

Ledger No.

Date of Application 3/15/76.

Name ALCALAY JOSEPH Social Security 058 36 9763
Last First Initial

Address 70-25. Yellowstone Blvd City Forest-Hills Zip 11375
Mailing Address

Date of Birth 5 12 1932 Home Phone 793-5336. Salary and/or Commission $13 per Hr
Month Day Year

Electrical Ind

Employer's Name Joint Industry Board. Employer's Phone Occupation D.D.S.

Employer's Address Flushing N.Y. City Zip 11365

Original Date of Employment FEB 1973. Recommended by A. J.D.

Initiation Fee $ 100 — Dues $ 10 — month. Approved by

Previous Employer Were you ever a member of a Union? NO

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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285

Signature Joseph Alcalay

A523

GC #5E
Regm 11/11/76
Per T Roc.

Application for Membership

LOCAL UNION No. 277

Affiliated with I. B. of T.

Ledger No.
Date of Application 3-14-76

Name GOLDBERG GUS, D.D.S Social Security
Last First Initial
Address 123-40 83rd AVE. City Kew Gardens, N.Y. Zip 11415
Mailing Address
Date of Birth 3-2-1916 Home Phone 212-544-6458 Salary and/or Commission $13.50 per HR.
Month Day Year
Employer's Name J. I. B. Employer's Phone Occupation DENTIST
Employer's Address 152-11 Jewel Ave. City FLUSHING, N.Y. Zip 11365
Original Date of Employment APRIL, 1972 Recommended by A J D
Initiation Fee $ 100.– Dues $ 10 month. Approved by
Previous Employer Were you ever a member of a Union? NO
Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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Signature Gus Goldberg, DDS

A524

Application for Membership

6C#56
Ixgm 7/1/76
[illegible]
J L [illegible]

LOCAL UNION No. 277

Affiliated with I. B. of T.

Ledger No.

Date of Application 3/1/76

Name NESSE GERALD J
Last First Initial

Social Security 093-14-6194

Address 324 EAST 18ST City NY NY Zip 10003
Mailing Address

Date of Birth 4-5-1921 Home Phone 777-9113 Salary and/or Commission P/S [illegible]
Month Day Year

Employer's Name JIB - Federal Industry Employer's Phone Occupation Mech

Employer's Address 153-11 Jewel Ave City NY NY Zip

Original Date of Employment 9/73 Recommended by AJD

Initiation Fee $ 100 Dues $ —— month. Approved by

Previous Employer Self Employed —— Were you ever a member of a Union?

Address If so, state Union

Money Received

Date	Amount	Rec'd by

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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Signature Gerald J. Nesse

Application for Membership

6C#55
Mgm 7/1/76
[illegible]

LOCAL UNION No. 277

Affiliated with I. B. of T.

Ledger No.

Date of Application [illegible]

Name [illegible] [illegible] K
Last First Initial

Social Security [illegible]

Address [illegible] [illegible] City Brooklyn NY Zip [illegible]
Mailing Address

Date of Birth [illegible] 50 Home Phone [illegible] Salary and/or Commission [illegible]
Month Day Year

Employer's Name JIB [illegible] Employer's Phone Occupation [illegible]

Employer's Address [illegible] City [illegible] Zip 11261

Original Date of Employment July 1973 Recommended by AJD

Initiation Fee $ [illegible] Dues $ [illegible] month. Approved by

Previous Employer Were you ever a member of a Union? No

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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Signature

A525

Application for Membership
LOCAL UNION No. 277
Affiliated with I. B. of T.

60 #5 I
[illegible] 3/1/76
[illegible] Rec.

Ledger No.
Date of Application 3/18/76
Name WARREN JOHN [illegible] (Last, First, Initial)
Social Security [illegible]
Address 64 [illegible] Ave. (Mailing Address)
City New Rochelle
Zip 10[illegible]
Date of Birth 10 11 1907 (Month, Day, Year)
Home Phone 914 N. 6-6641
Salary and/or Commission [illegible]
Employer's Name J I B [illegible]
Employer's Phone
Occupation
Employer's Address 153-11 [illegible] Ave.
City Flushing, NY
Zip 113[illegible]
Original Date of Employment [illegible] 1972
Recommended by A J D
Initiation Fee $
Dues $
month. Approved by
Previous Employer Self
Were you ever a member of a Union? No
Address
If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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Signature J. [illegible] Warren

Application for Membership
LOCAL UNION No. 277
Affiliated with I. B. of T.

60 5H
[illegible] 3/9/76
J. I Rec.

Ledger No.
Date of Application 3/19/76
Name VIERNO JOSEPH D (Last, First, Initial)
Social Security 053-18-4836
Address 4 CROSSWAY EASTCHESTER N.Y. (Mailing Address, City)
Zip 10709
Date of Birth 11 2 10 (Month, Day, Year)
Home Phone 914-WO1-8862
Salary and/or Commission $12/hr.-3 hrs.
Employer's Name J I B
Employer's Phone —
Occupation DENTIST
Employer's Address J I B FLUSHING N.Y. City
Zip 11365
Original Date of Employment JANUARY-1975
Recommended by A J D.
Initiation Fee $ 100
Dues $ 10
month. Approved by
Previous Employer NONE
Were you ever a member of a Union? NO.
Address —
If so, state Union —

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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Signature Jos. D. Vierno DDS

A526

Mgm 6C 5R
for S 4/1/76
Rec.

Application for Membership

LOCAL UNION No. 277

Affiliated with I. B. of T.

Ledger No.

Date of Application 3-14-76

Name Manford (Last) Jules (First) — (Initial) Social Security 069-14-90[illegible]

Address 33-23 171 St Flushing (Mailing Address) City New York Zip 11358

Date of Birth 1 (Month) 23 (Day) 1919 (Year) Home Phone 212-353 4044 Salary and/or Commission [illegible] per

Employer's Name J. I. B. - Local 3 Employer's Phone 424 1196 Occupation Dentist

Employer's Address 158-11 Jewel Av City NY Zip

Original Date of Employment December 1971 Recommended by A. J & D

Initiation Fee $ 100 Dues $ 10 month. Approved by

Previous Employer Self employed Were you ever a member of a Union? no

Address 33-23 171 St Flushing If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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245

Signature Jules Manford

6445 T
Mgm 4/1/76
for Rec.

Application for Membership

LOCAL UNION No. 277

Affiliated with I. B. of T.

Ledger No.

Date of Application 3/14/76

Name GREENWOOD, MONTE (Last) (First) (Initial) Social Security 07132055[illegible]

Address 400 East 74th ST (Mailing Address) City New York Zip 10021

Date of Birth 4/1/02 (Month) (Day) (Year) Home Phone 249 3030 Salary and/or Commission 12,500 [illegible]

Employer's Name A J B Affiliated Services Employer's Phone Occupation Dentist

Employer's Address 158-11 Jewel Av. Flushing City NY Zip 11365

Original Date of Employment [illegible] Recommended by A J D

Initiation Fee $ 100 Dues $ 10 month. Approved by

Previous Employer Were you ever a member of a Union? No

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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245

Signature M. Greenwood

A527

C 5L

Resign 7/19/76

For I Rec.

Application for Membership

LOCAL UNION No. 277

'Affiliated with I. B. of T.

Ledger No.

Date of Application 3/14/76

Name NASH EDGAR Social Security 123-49-[illegible]

Last First Initial

Address 33-44 93rd St City Jackson Heights Zip 11372

Mailing Address

Date of Birth July 15 1914 Home Phone TL 1-8675 Salary and/or Commission $12/hour

Month Day Year

Employer's Name T.L.B. [illegible] Employer's Phone 591-2613 Occupation DENTIST

Employer's Address 158-11 [illegible] Ave City Flushing, NY Zip 11365

Original Date of Employment August 1974 Recommended by A.T.D.

Initiation Fee $ 175 Dues $ 15 month. Approved by

Previous Employer Self Were you ever a member of a Union? No

Address [illegible] Flushing NY NY 11373 If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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285

Signature

A528

GC-H-5 [illegible]
[illegible] 3/18/76

Application for Membership

LOCAL UNION No. 277

Affiliated with I. B. of T.

Ledger No.

Date of Application 3/18/76

Name Miller Sidney — Social Security 091-32-2056
Last First Initial

Address 2 Alfred Road West City Merrick Zip 11566
Mailing Address

Date of Birth 11 19 1913 Home Phone 516 FR8-6305 Salary and/or Commission 13.50/hr
Month Day Year

Employer's Name J.I.B. - Joint Industry Bd. of Electrical Industry Employer's Phone Occupation Dentist

Employer's Address 158-11 Jewel Avenue City Flushing Zip 11365

Original Date of Employment 3/ Recommended by AJD

Initiation Fee $ 100- Dues $ 10- month. Approved by

Previous Employer Self Were you ever a member of a Union? No

Address 82-01 Britton Ave, Elmhurst, N.Y. 11373 If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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285

Signature Sidney Miller

A529

Application for Membership RGM 7/19/76

LOCAL UNION No. 277

Affiliated with I. B. of T.

Ledger No.

Date of Application 3/14/76

Name MILLER LAWRENCE Social Security 113-28-5546

Last First Initial

Address 705 EAST 8 ST City BROOKLYN NY Zip 11230

Mailing Address

Date of Birth 10 27 36 Home Phone 444-6196 Salary and/or Commission $7/hr

Month Day Year

Employer's Name J I B LOCAL 3 Employer's Phone Occupation DENTIST

Employer's Address 158-11 JEWEL AVE City FLUSHING NY Zip 11365

Original Date of Employment 5/75 Recommended by HSD

Initiation Fee $ Dues $ month. Approved by

Previous Employer Were you ever a member of a Union?

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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285

Signature Lawrence Miller DDS

Application for Membership CCSR [illegible] RGM 7/19/76

LOCAL UNION No. 277

Affiliated with I. B. of T.

Ledger No. 123-22-0157

Date of Application 3/14/76

Name FALKEN [illegible] J Social Security

Last First Initial

Address 760 West End Drive City NYC Zip 10019

Mailing Address

Date of Birth Feb. 14 1915 Home Phone Ri 9 5419 Salary and/or Commission

Month Day Year

Employer's Name J.I.B. Local 3 Employer's Phone Occupation Dentist

Employer's Address 158-11 Jewel Ave City Fresh Meadows Zip 11365

Original Date of Employment 1-1-1975 Recommended by ~~[illegible]~~ H. S. D.

Initiation Fee $ 10 Dues $ 10 month. Approved by

Previous Employer Were you ever a member of a Union? No

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

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285

Signature [illegible] AS 30 113

BEST COPY AVAILABLE

6C 5P ~~6~~ [illegible]
[illegible] 7/19/76

Application for Membership

LOCAL UNION No. 277

Affiliated with I. B. of T.

Lodger No. /

Date of Application 3/14/76

Name KRAMER ROBERT M. Social Security 103-32-8056
Last First Initial

Address 2116 MERRICK AVE. City MERRICK N.Y. Zip 11566
Mailing Address

Date of Birth 10 24 41 Home Phone (516) 546 1444 Salary and/or Commission $14./HR.
Month Day Year

Employer's Name JOINT INDUSTRY BOARD · DENTAL CLINIC Employer's Phone 591-2014 Occupation DENTIST - SPECIALIST IN ORAL SURGERY

Employer's Address 158-11 JEWEL AVE. City FLUSHING NY Zip 11365

Original Date of Employment AS A DENTIST 7/69 Recommended by A.J.D.

Initiation Fee $100. Dues $10. month. Approved by

Previous Employer NONE Were you ever a member of a Union? NO

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

I further agree to make every effort to attend meetings and will pay all dues and assessments levied in accordance with the I. B. of T. Laws. It is understood that should it be hereafter discovered I have made any misstatements as to my qualification for membership that I be disbarred from all benefits provided by this Union. It is further understood and agreed that there will be no money refunded on this Application.

283

Signature Robert Michael Kramer

6C 50 [illegible]
[illegible] 7/1/76

Application for Membership

LOCAL UNION No. 277

Affiliated with I. B. of T.

Lodger No. /

Date of Application 3/14/76

Name LEVINE SEYMOUR W. Social Security 094-12-0685
Last First Initial

Address 139 W. Valley Stream Blvd City Valley Stream Zip 11580
Mailing Address

Date of Birth 11 2 21 Home Phone 516 LO1-1251 Salary and/or Commission ~~226~~ $13/hr
Month Day Year

Employer's Name JOINT INDUSTRY BOARD Employer's Phone Occupation ~~[illegible]~~ DENTIST

Employer's Address FLUSHING, NY City N.Y. Zip 11365

Original Date of Employment OCT. 1973 Recommended by A.J.D.

Initiation Fee $ 100- Dues $ 10 month. Approved by

Previous Employer Were you ever a member of a Union? NO

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

I further agree to make every effort to attend meetings and will pay all dues and assessments levied in accordance with the I. B. of T. Laws. It is understood that should it be hereafter discovered

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Application for Membership

Negm 7/19/76

LOCAL UNION No. 277

Affiliated with I. B. of T.

Ledger No.

Date of Application 3/14/76

Name LESTER KATZ (Last, First, Initial) Social Security 071-33-6194

Address 4750 Bedford Ave (Mailing Address) City Brooklyn N.Y. Zip 11235

Date of Birth JAN. 13 - 1968 (Month, Day, Year) Home Phone 212-648-6058 Salary and/or Commission $12.50 per hour $350 weekly

Employer's Name J.I.B. Joint Industry Board of Electrical Union Employer's Phone Occupation DENTIST

Employer's Address 158-11 Jewel Ave City Flushing N.Y. Zip 11365

Original Date of Employment 1992 Recommended by N.Y. ~~[illegible]~~ A.G.D.

Initiation Fee $ 100 Dues $ 10 month. Approved by

Previous Employer Self employed Were you ever a member of a Union? No.

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

I further agree to make every effort to attend meetings and will pay all dues and assessments levied in accordance with the I. B. of T. Laws. It is understood that should it be hereafter discovered I have made any misstatements as to my qualification for membership that I be disbarred from all benefits provided by this Union. It is further understood and agreed that there will be no money refunded on this Application.

285

Signature Lester Katz D.D.S.

Mg82 1/19/76

LOCAL UNION No. 277

Affiliated with I. B. of T.

Lodger No. 31459

Date of Application 3/19/76

Name Goldsmith MILTON Social Security
Last First Initial

Address 450 BEACH 134 ST. City BELLE HARBOR, N.Y Zip 11694
Mailing Address

Date of Birth MAY 15 1915 Home Phone 945-0070 Salary and/or Commission 480
Month Day Year

Employer's Name J.I.B. ELECTRICAL INDUSTRY Employer's Phone Occupation DENTIST

Employer's Address 158-11 JEWEL AVE, FLUSHING City NEW YORK Zip

Original Date of Employment 1959 Recommended by

Initiation Fee $ Dues $ month. Approved by

Previous Employer NONE Were you ever a member of a Union? NO

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

I further agree to make every effort to attend meetings and will pay all dues and assessments levied in accordance with the I. B. of T. Laws. It is understood that should it be hereafter discovered I have made any misstatements as to my qualification for membership that I be disbarred from all benefits provided by this Union. It is further understood and agreed that there will be no money refunded on this Application.

283

Signature Milton Goldsmith

CC 55 ~~mbr~~

1/19/76

Application for Membership

LOCAL UNION No. 277

Affiliated with I. B. of T.

Lodger No.

Date of Application Mar 14, 76

Name GarField, Martin Social Security 053-34-9405
Last First Initial

Address 2116 Merrick Ave City Merrick NY Zip 11566
Mailing Address

Date of Birth 8 20 42 Home Phone (516) 546-1444 Salary and/or Commission $14.00/hr
Month Day Year

Employer's Name JIB Local 3 Dental Clinic Employer's Phone 591-2014 Occupation Dentist (oral surgeon)
Joint Industry Bd

Employer's Address 155-11 Jewel Ave City Queens Zip

Original Date of Employment July 1969 Recommended by HED A.J.D

Initiation Fee $ 100 — Dues $ 10.— month. Approved by

Previous Employer Were you ever a member of a Union? No

Address If so, state Union

Money Received

Date	Amount	Rec'd By

I hereby accept membership in Local Union 277, I.B.T., and of my own free will hereby authorize Local Union 277, I.B.T., its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours or other conditions of employment. I agree to abide by the Constitution of the International as well as the Local Constitution & By-Laws.

I further agree to make every effort to attend meetings and will pay all dues and assessments levied in accordance with the I. B. of T. Laws. It is understood that should it be hereafter discovered I have made any misstatements as to my qualification for membership that I be disbarred from all benefits provided by this Union. It is further understood and agreed that there will be no money

MGMNYBT HSA
1-007281E075002 03/15/76
ICS IPMMTZZ CSP
1 2126911022 MGM TDMT NEW YORK NY 03-15 1003A EST

western union Mailgram

UNITED STATES POSTAL SERVICE

GC Ex #77A
[illegible] 7/15/76
Rec.

TEAMSTERS LOCAL 277 ANTHONY J DISTINTI
27 UNION SQ
NEW YORK NY 10003

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2126911022 TDMT NEW YORK NY 74 03-15 1003A EST
PMS PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTICAL INDUSTRY ATTN DOCTOR SIDNEY KRAUSS DIRECTOR, DELIVER IMMY, REPORT DELIVERY AND MAIL CY, DLR
158-11 JEWEL AVE
FLUSHING NY 11365
THIS TELEGRAM WILL OFFICIALLY SERVE TO NOTIFY THAT TEAMSTERS LOCAL 277 REPRESENTS YOUR EMPLOYEES CLASSIFIED AS DENTISTS.
WE ARE REQUESTING A MEETING WITH YOU TO DISCUSS A COLLECTIVE BARGAINING AGREEMENT COVERING SAID EMPLOYEES.
WE KNOW THAT YOU ARE AWARE THAT ANY DISCRIMINATION AGAINST THESE EMPLOYEES BECAUSE OF THEIR DESIGNATION OF TEAMSTERS LOCAL 277 AS THEIR BARGAINING AGENT WOULD CONSTITUTE AN UNFAIR LABOR PRACTICE
ANTHONY J DISTINTI PRESIDENT TEAMSTERS LOCAL 277 27 UNION SQ NEW YORK NY 10003 PHONE 6911020

10:03 EST

MGMNYBT HSA

BEST COPY AVAILABLE

Mailgram
western union

MNYBT HSB
4-0257415076 03/16/76
ICS IPMMTZZ CSP
2122220000 MGM TDMT JAMAICA NY 100 03-16 0152P EST

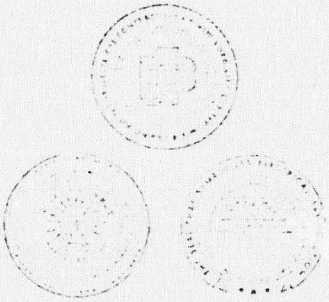
GCG #7B [illegible]
Mtg on 7/19/76

TEAMSTERS LOCAL 277
27 UNION SQ SUITE 405
NEW YORK NY 10003

YOUR TELEGRAM TO PENSION COMMITTEE JOINT INDUSTRY BOARD WAS DELIVERED 0150PM EST MARCH 15 1976
WESTERN UNION

13:52 EST

MGMNYBT HSB



PENSION, HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY

PENSIONS

MAJOR MEDICAL

HOSPITALIZATION

SURGERY

DEATH & PENSION PREMIUM

SERIOUS INJURY

REST HOME

DENTAL

MEDICAL

OPTICAL

JULY 1, 1974

32. The Pension Committee shall have the power to certify to the Union their decision that a Participant eligible for pension under the Agreement is unable to do the work normally required of a Journeyman on electrical work and in that event, the Union shall issue a dormant card to such Participant, and such Participant shall receive pension benefits hereunder.

33. As long as this Agreement is in effect, pension payments shall continue to be made in accordance with its terms and conditions to Participants, but shall automatically terminate upon their death, except as provided in paragraph 25 (A) (d) and paragraph 25(B) (g) of this plan.

34. The Pension Committee shall have the right to formulate its own rules of procedures governing the method by which its meetings shall be conducted and its decisions adopted, and enforced, provided, however, that all said rules and regulations are consistent with the specific provisions or conditions of this Agreement.

35. The benefits payable to Participants or beneficiaries under this Plan cannot be assigned and shall not be liable to attachment, garnishment or other process, and shall not be taken, appropriated or applied by any legal or equitable process, or by operation of law, to pay any debt or liability of the Participant or of any beneficiary or next-of-kin who may have a right thereunder, either before or after payment.

36. Upon the failure of a Participant to name and/or designate a beneficiary or beneficiaries the benefits shall be payable in the following order of priority:

(A) to surviving spouse;
(B) children of the deceased Participant;
(C) father of the deceased Participant;
(D) mother of the deceased Participant;
(E) brothers and sisters of the deceased Participant;
(F) personal representative of the deceased Participant's estate.

Where under this section, benefits become payable to a person who is under twenty-one (21) years of age, the amount may be paid to such persons—without requiring the appointment of a guardian—by paying such amount to anyone over the age of twenty-one (21) years who submits satisfactory proof that he or she is supporting and maintaining such person and gives assurance to the Plan in satisfactory form that the monies paid over will be used for such purposes.

AMENDMENT AND TERMINATION

37. The parties hereto may at any time and from time to time modify this Agreement in any of its terms, or terminate the same in its entirety, and neither the making of this Agreement nor the creation of any Fund pursuant thereto shall be construed as giving any Employee or any person whatsoever any legal or equitable right against the Union, any Employer, the Committee and/or any

Fund, except such right as is specifically provided for herein, or given by action of the Committee duly taken in accordance with the provisions hereof.

38. (a) The Pension Trust Fund and the Trust Fund to be used for the payment of other benefits under this Plan may be terminated when there is no longer in force any Agreement between the Employers and the Union requiring Employer contributions to this Plan for the purposes hereinabove provided. This Plan may, likewise, be terminated at any time by the unanimous vote of all members of the Committee with the consent of the Employers and the Union.

(b) In the event of a termination of the Pension Trust Fund and the Trust Fund the members of the Committee shall apply the funds to pay or provide for the payment of any and all obligations of said respective Trusts and distribute and apply any remaining surplus in such manner as will, in their opinion, best effectuate the purposes of said Trusts, provided, however, that no part of the corpus or income of said Trusts shall be used or diverted to purposes other than the exclusive benefit of the Participants, retired employees and employees eligible for retirement or the administrative expenses of said Pension Trust Fund or for other payments in accordance with the provisions of such Plan.

(c) Upon the termination of the Plan, the Trustees shall forthwith notify the Union, the

Employers and all other necessary parties, and shall continue as members of the Committee for the purpose of winding up the affairs of the Trusts.

39. Notwithstanding anything contained in this Agreement, it shall be impossible at any time prior to the satisfaction of all liabilities with respect to employees entitled to benefits hereunder, for any part of the corpus or income of the trusts hereby created to be used for or diverted to purposes other than exclusive benefit of such employees.

40. In the event that this Agreement terminates by operation of any provision hereof, or by mutual consent of the parties, then (a) no one affected thereby shall have any right or recourse of any kind against the Fund, the Union, or the Employers, and (b) the funds then on hand shall be applied as prescribed in paragraph "40" hereof.

41. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the said counterparts shall constitute but one and the same instrument and may be sufficiently evidenced by any one counterpart.

THE MINUTES OF THE MEETING OF THE PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY HELD ON WEDNESDAY, APRIL 28, 1976 AT THE ELECTRIC INDUSTRY CENTER, 158-11 JEWEL AVENUE, FLUSHING,

The meeting was called to order by the Chairman, Mr. Alfred P. Minervini at 2:00 P.M.

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7/3/72

Present:

James Andrews	Alfred P. Minervini
Joseph Chaloupka	Frank Montemagno
Robert Fields	Christopher Plunkett
Harry Gavin	Robert Reade
D. Bert Haring	Charles Salzhauer
George Kleinknecht	George J. Schuck, Jr.
John Kromer	Frederick Stein
John Marcato	Herbert Tipperman
	Thomas Van Arsdale

Also Present Were:

Thomas E. Caufield	Joseph D'Angelo
Robert Collins	Harold Helfer
Armand D'Angelo	Lee Schrager

Donald F. Menagh - Counsel
Robert F. Wagner - Public Member

Guest:

Robert D. Krinsky - Martin E. Segal Co.

The minutes of the Regular Meeting held on February 25, 1976 were read and approved.

The following Financial Reports were presented by the Director of Administration, Mr. Joseph D'Angelo:

Financial Statement Regular Account dated March 31, 1976
Financial Statement Pension Trust Account dated March 31, 1976

Each Trustee read a copy of the Financial Report and a motion was made and approved to accept the Financial Report as read and presented.

Mr. Harold Helfer, Acting Secretary, presented the following reports:

Medical and Dental reports for months of February, 1976 and March, 1976
Report on Optical Department from August 1, 1964 to March 31, 1976
E.C.H. Expense Account from September, 1952 to March 31, 1976

Each Trustee read a copy of the Report and a motion was made and approved to accept the Report as read and presented.

THE MINUTES OF THE MEETING OF THE PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY HELD ON WEDNESDAY, APRIL 28, 1976 AT THE ELECTRIC INDUSTRY CENTER, 158-11 JEWEL AVENUE, FLUSHING, N.Y.

Mr. Harold Helfer, Acting Secretary, presented the following reports:

Summary Report of the Pension Committee from Inception to March 31, 1976
Hospitalization payments for period covering months of February, 1976 and March, 1976

Each Trustee read a copy of the Report and a motion was made and approved to accept the Report as read and presented.

Reports on the activities of the Dental Department for the months of February, 1976 and March, 1976, as submitted by Dr. Krauss were read and approved and ordered placed on file.

Reports on the activities of the Medical Department for the months of February, 1976 and March, 1976, as submitted by Dr. Kriete were read and approved and ordered placed on file.

The Committee ratified the payments of the Hospitalization, Surgery and Serious Injury Benefits as included in these minutes for February, 1976 and March, 1976.

The Sub Committee, at a meeting held on April 5, 1976, to which had been referred determination of eligibility based on applications for retirement benefits as outlined in the Pension, Hospitalization and Benefit Plan, made the following recommendations:

James Carroll	Card No. BA DBM 977396 - The Sub Committee recommended that Disability Pension be granted James Carroll effective 1/01/76 payable at $150.00 per month.
Simon Cohen	Card No. MJ D273169 - Request for information Re: eligibility for pension The Sub Committee recommended that Simon Cohen be considered not eligible for Standard Pension because he does no have enough time in the Plan.
Nettie Corenzwit	Card No. BA ADM 1655384 - The Sub Committee recommended that Disability Pension be granted Nettie Corenzwit effective 2/01/76 payable at $150.00 per month.
Harry Drucker	Card No. BAF 882631 - The Sub Committee recommended that Standard Pension be granted Harry Drucker effective 2/01/7 payable at $115.00 per month.

THE MINUTES OF THE MEETING OF THE PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY HELD ON WEDNESDAY, APRIL 28, 1976 AT THE ELECTRIC INDUSTRY CENTER, 158-11 JEWEL AVENUE, FLUSHING, N.Y.

William Fingerhut	Card No. A C93293 - The Sub Committee recommended that Disability Pension be granted William Fingerhut effective 2/01/76 payable at $150.00 per month.
Bertram Fischel	Card No. A E2284 - The Sub Committee recommended that Disability Pension be granted Bertram Fischel effective 1/01/76 payable at $150.00 per month.
Desmond Harrison	Card No. A J515531 - The Sub Committee recommended that Disability Pension be granted Desmond Harrison effective 1/01/76 payable at $195.00 per month.
Bert Herbert	Card No. A 755218 - The Sub Committee recommended that Disability Pension be denied Bert Herbert. The Medical Director, again, re-evaluated members condition and in his opinion Mr. Herbert is not disabled to such an extent that he cannot secure gainful employment in the electrical or any other line of business.
Frederick Jackson	Card No. BAERA 2548508 - The Sub Committee recommended that the Standard Pension application for Frederick Jackson be Tabled. Member to be notified to supply proof of employment with Dineen Corp..
Alfred Long	Card No. A 936816 - The Sub Committee recommended that Disability Pension be granted Alfred Long effective 1/01/76 payable at $177.00 per month.
Robert McAllister	Card No. A D272924 - The Sub Committee recommended that Disability Pension be granted Robert McAllister effective 2/01/76 payable at $150.00 per month.
James S. McLane	Card No. A 197615 - The Sub Committee recommended that Disability Pension be granted James S. McLane effective 1/01/76 payable at $110.00 per month.
Rene Mercader	Card No. A D160152 - The Sub Committee recommended that Disability Pension be granted Rene Mercader effective 1/01/76 payable at $150.00 per month.

Jerome Tabakman	Card No. A E239 - The Sub Committee recommended that Disability Pension be granted Jerome Tabakman effective 4/01/ payable at $150.00 per month.
Walter W. Tumm	Card No. J D861 - The Sub Committee recommended that Disability Pension be denied Walter W. Tumm. It is the opini of the Cardiologist that this man is no disabled to such an extent that he cann secure gainful employment in the electrical or any other line of busines
Robert Walsh	Card No. A D242368 - The Sub Committee recommended that Disability Pension be granted Robert Walsh effective 4/01/76 payable at $150.00 per month.
Jack Wolters	Card No. A X33303 - The Sub Committee recommended that Disability Pension be granted Jack Wolters effective 3/01/76 payable at $174.00 per month.
Anthony Zambino	Card No. BAEM 889902 - The Sub Committe recommended that Standard Pension be granted Anthony Zambino effective 3/01/ payable at $125.00 per month.

The Pension Committee concurred with the recommendations of the Sub Committee.

The Sub Committee, at a meeting held on April 5, 1976, to which had been referred determination of eligibility for the Hospitalization, Surgery and/or Major Medical Plan Benefits, made the following reports:

Jerry DeGeronimo	Card No. BAEE 424285 - The Sub Committee recommended that the Major Medical Plan Benefit be issued to Jerry DeGeronimo for the time in the Institut of Rehabilitation Medicine.
Edward C. Dombo	Card No. A D273393 - Request for Hospitalization and Major Medical Plan Benefits for adopted daughter, Dawn Crystal: The Sub Committee recommended that Edward C. Dombo be considered not eligible for Hospitalization and Major Medical Plan Benefits for adopted daughter, Dawn Crystal for nursery charges in this instance.

John Kautz

Card No. A 802377 - Request for Major Medical Plan Benefit submitted by Joh Kautz for child, Stephen for dental surgery: The Sub Committee recommend that this case be referred to Dr. Krau for review.

Russel Kuzmack

Card No. BA 852653 - Request for Serio Injury Benefit: The Sub Committee recommended that the Serious Injury Benefit be issued to Russell Kuzmack for time in hospital.

The Pension Committee concurred with the recommendations of the Sub Committee.

The applicants for Pension appeared before the Pension Committee. The Pension Committee approved each eligible applicant for Pension Benefits and presented them with a small retirement kit as a token of appreciati for the years served in the Electrical Industry.

Special cases of request by applicants for Pension who could not appear were presented. Their appearance was waived and their application for pension approved.

The Acting Secretary stated that since the last meeting, notices of death of the following members were received and a letter of condolence was sent to the next of kin.

NAME	CARD NO.	PENSION	AGE	DECEASED
Abraham Aidelman	A 727217	S	75	4/02/76
Irving Appelbaum	A 727459	S	73	3/15/76
Joseph Buckley	A 707559	R	62	3/12/76
Louis Chapman	A 638366	S	78	2/14/76
Haim Cohen	A 621305	S	74	2/20/76
Joseph Fusco	A 727345	S	69	3/14/76
Jack Goldberg	A 199531	S	80	2/25/76
George Gross	A 727187	S	69	2/25/76
Solomon Helfand	A 728219	S	69	2/04/76
William Howard	A 817344	S	68	2/11/76
August Kalista	A 198973	S	75	3/14/76
Yasukichi Matsumoto	A 727266	S	79	2/10/76
Michael Mc Evoy	A 199350	S	74	4/05/76
Charles Mc Govern	A 198035	S	80	3/02/76
Abraham Metz	A 558444	S	75	2/23/76
William Mills	A 732997	S	67	2/14/76
Roland Morgan	A 250807	S	83	3/03/76
Charles Murphy	A 198384	S	77	2/25/76

James O'Donnell	A 434533	S	85	2/23/76
William Purcell	A 319752	S	84	12/07/75
George Ryan	A D85216	R	79	2/07/76
Benjamin Schneider	A 558345	S	74	2/20/76
Harold Searing	A 51521	S	70	2/17/76
Paul Shaffron	DMS 728791	S	62	2/05/76
Charles Sklenar	A 199907	S	84	2/14/76
Robert Smith	A 197098	S	86	1/20/76
Bernard Toher	A 637971	S	78	3/23/76
Isidore Weinstock	A 615804	S	84	3/23/76
Harry Willoughby	DMS 728726	S	77	1/10/76
Joseph Wymes	A 558486	S	76	3/06/76
Frank Zino	A 558628	S	70	1/31/76

Average age of above listed decedents: 75 years of age
Average number of years on pension: 10 years

Mr. Minervini reported that there were many "Thank You" letters from pensioners and their wives for their stay at Bayberry Land.

Mr. Alfred P. Minervini, Chairman of the Pension Committee, introduced Mr. Robert D. Krinsky, Senior Vice President of the Martin E. Segal Co.. Mr. Krinsky presented an Actuarial Report to the Trustees.

Each Trustee of the Pension Committee read a copy of the Actuarial Report. This report was reviewed page by page by the Trustees and Mr. Krinsky.

Mr. Minervini thanked Mr. Krinsky for the report and it was suggested that a committee be appointed to meet with Mr. Krinsky to establish a criteria with reference to the new pension laws. A Sub Committee was appointed to meet with Mr. Krinsky on this matter.

A preliminary report was made to discuss the feasibility to buy, lease or rent a piece of property for a Retirees Center. A Motion was Made to adopt a resolution to develop a portion of land in Bayberry for this purpose, and it was suggested that a Committee be appointed to look into this matter. Seconded and Carried.

Mr. Minervini appointed Alfred P. Minervini, James Andrews, Herbert Tipperman, Harry Van Arsdale Jr., Thomas Van Arsdale and George Schuck, Jr. and stated that Armand D'Angelo would be ex-officio member of the Committee.

Mr. Robert Collins, Director of the Pension Department, reported on the Pre-Retirement Plan. He stated that meetings would be held once a month for participants of Local Union No. 3 from age 82 down to age 44. A discussion group headed by two speakers from the Social Security Office in Flushing and Mr. Joseph D'Angelo would be on hand

THE MINUTES OF THE MEETING OF THE PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY HELD ON WEDNESDAY, APRIL 28, 1976 AT THE ELECTRIC INDUSTRY CENTER, 158-11 JEWEL AVENUE, FLUSHING, N.Y.

to discuss Pension Benefits for eligible participants.

Armand D'Angelo reported that the oldest living retiree, Harry Starrett, would be 100 years old in June and a suggestion was made that something be done to honor Mr. Harry Starrett on his 100th Birthday.

Mr. John Marcato reported that there are 14 Elevator Contractors who owe the Joint Industry Board a quarter of a million dollars. He stated that this was a very serious problem.

It was suggested that Mr. Marcato communicate with the Business Manager regarding this problem and that it be brought to the Trustees of the Pension Committee so that they can handle the situation expeditiously.

It was reported that the District #1 Convention would be held on June 4, 1976. It was suggested that the Pension Sub Committee meet the first Monday in June.

Meeting adjourned at 5:00 P.M.

Respectfully submitted,

Acting Secretary

DENTAL DEPARTMENT • PENSION COMMITTEE
JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY
158-11 JEWEL AVENUE • FLUSHING, N. Y. 11365 • 591-2014

SIDNEY KRAUSS, D.D.S.
Director

HON. ARMANDO D'ANGELO
Chairman, Joint Industry Board of the Electrical Industry

• • •

Trustees

ALFRED P. MINERVINI
Chairman

GEORGE W. KLEINKNECHT
Treasurer

THOMAS VAN ARSDALE
Secretary

GEORGE SCHUCK, JR.
Trustee

• • •

HON. ROBERT F. WAGNER
Public Member

DONALD F. MENAGH
Counsel

• • •

Employer Representatives
JAMES ANDREWS
ALLEN D. FISCHBACH
D. BERT HARING
EFREM A. KAHN
THEODORE KAISH
GEORGE W. KLEINKNECHT
JOHN J. MARCATO
ALFRED P. MINERVINI
CHARLES SALZHAUER
HERBERT TIPPERMAN

Employee Representatives
JOSEPH CHALOUPKA
HARRY J. GAVIN
WALTER INESON
JOHN KROMER
FRANK MONTEMAGNO
CHRISTOPHER PLUNKETT
GEORGE SCHUCK, JR.
FREDERICK STEIN
HARRY VAN ARSDALE JR.
THOMAS VAN ARSDALE

GC Ex 12 for ID
7/23/

April 30, 1976

Dear Patient,

We sincerely regret being compelled to advise you that the dental facility will be closed until further notice.

We must, therefore, inform you that your appointments have been cancelled.

You will be notified by the Pension Committee with a more complete explanation shortly.

Yours very truly,-

Sidney Krauss, D.D.S.
Director

D102 2M 4-76

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TM 7/21/76

PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

STATEMENT OF ASSETS, LIABILITIES AND FUND BALANCE

SEPTEMBER 30, 1975

ASSETS

CURRENT ASSETS:		
Cash	$ 3,568	
Receivables	1,723,466	$ 1,727,034
INVESTMENTS:		
Certificates of Deposit, Short Term Investments	15,000	
U.S. Treasury Notes, Bonds, Bills and Federal Agencies	2,795,163	
E.C.H. Holding Corp.-Stock	142,500	
A.F.L. - C.I.O. Mortgage Investment Fund	199,779	
Bonds	13,404,642	16,557,034
FIXED ASSETS:		
Furniture and Fixtures - Net of Accumulated Depreciation	107,041	
E.C.H. Development and Construction - Net of Accumulated Depreciation	1,706,765	1,813,806
TOTAL ASSETS		$20,097,924

LIABILITIES AND FUND BALANCE

Accrued Expenses Payable	1,616,703	
Other Liabilities	928,014	$ 2,544,717
FUND BALANCE - September 30, 1975		17,553,207
TOTAL LIABILITIES AND FUND BALANCE		$20,097,924

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PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

STATEMENT OF CHANGES IN FUND BALANCE

OCTOBER 1, 1974 TO SEPTEMBER 30, 1975

Fund Balance - October 1, 1974			$19,083,267
ADDITIONS:			
Receipts from Contractors		$10,011,952	
Net Interest Income Earned		1,597,232	
Return of Fund Balance from Loan Fund		345,000	11,954,184
			31,037,451
DEDUCTIONS:			
Expenses Paid Directly to Members for Major Medical, Hospitalization, Surgery Injury, Dues & Insurance Benefits	$10,581,762		
E.C.H. Expenses	200,534		
Dental Department	726,126		
Medical Department	798,373		
Consultant Fees	103,595		
Optical Department	185,329	12,595,719	
ADMINISTRATIVE EXPENSES:			
Payroll Expenses	161,575		
Rent	136,739		
Administrative and record keeping expense paid to Joint Industry Board	516,000		
Miscellaneous Expense	74,211	888,525	(13,484,244)
FUND BALANCE - SEPTEMBER 30, 1975			$17,553,207

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PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

STATEMENT OF ASSETS, LIABILITIES AND FUND BALANCE

NOVEMBER 30, 1975

ASSETS

CURRENT ASSETS:		
Cash	$ (21,024)	
Receivables	1,607,394	$ 1,586,370
INVESTMENTS:		
Certificates of Deposit, Short Term Investments	15,000	
U.S. Treasury Notes, Bonds, Bills and Federal Agencies	2,795,153	
E.C.H. Holding Corp.-Stock	142,500	
A.F.L. - C.I.O. Mortgage Investment Fund	199,779	
Corporate Bonds	13,040,676	16,193,108
FIXED ASSETS:		
Furniture and Fixtures - Net of Accumulated Depreciation	107,041	
E.C.H. Development and Construction - Net of Accumulated Depreciation	1,706,765	1,813,806
TOTAL ASSETS		$19,593,284

LIABILITIES AND FUND BALANCE

Accrued Expenses Payable	$ 1,623,499	
Other Liabilities	910,177	$ 2,533,676
FUND BALANCE - NOVEMBER 30, 1975		17,059,608
TOTAL LIABILITIES AND FUND BALANCE		$19,593,284

These figures have been prepared without the S.D. Leidesdorf & Co. closing entries for the year ending September 30, 1975.

PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

STATEMENT OF CHANGES IN FUND BALANCE

OCTOBER 1, 1975 TO NOVEMBER 30, 1975

Fund Balance - October 1, 1975			$17,445,112
ADDITIONS:			
Receipts from Sontractors		$1,274,165	
Net Interest Income Earned		236,039	
Return of Fund Balance from Loan Fund		20,000	1,530,204
			18,975,316
DEDUCTIONS:			
Expenses Paid Directly to Members for Major Medical, Hospitalization, Surgery Injury, Dues & Insurance Benefits	$1,393,808		
E.C.H. Expenses	22,440		
Dental Department	146,431		
Medical Department	161,928		
Consultant Fees	24,114		
Optical Department	36,923	1,785,644	
ADMINISTRATIVE EXPENSES:			
Payroll Expenses	20,530		
Rent	20,042		
Administrative and record keeping expense paid to Joint Industry Board	86,000		
Miscellaneous Expense	3,492	130,064	(1,915,708)
FUND BALANCE - NOVEMBER 30, 1975			$17,059,608

These figures have been prepared without the S.D. Leidesdorf & Co. closing entries for the year ending September 30, 1975.

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JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY
158-11 JEWEL AVENUE • FLUSHING, N.Y. 11365 • 591-2000

Rep'g Exy For'd 11 EU.
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HON. ARMAND D'ANGELO
Chairman
EFREM A. KAHN
Secretary
GEORGE SCHUCK, JR.
Treasurer
HON. ROBERT F. WAGNER
Public Member
DONALD F. MENAGH
Counsel

Employer Representatives
JAMES ANDREWS
JACK DAVIDSON
JOHN E. DOOLEY
ROBERT FINKELSTEIN
D. BERT HARING
FELIX HIRSCH
MORTON D. HOFFMAN
EFREM A. KAHN
SIDNEY P. LIPKINS
SEYMOUR MELLEN
ALFRED P. MINERVINI
CHARLES L. SCHARFE, JR.
HERBERT TIPPERMAN
JAMES M. WATTERS, JR.
A. DAVID YADLOVKER

Employee Representatives
JOSEPH CHALOUPKA
ROBERT DOBBINS
WILLIAM F. GILLIN
ANGELO GRANATA
WALTER INESON
JOHN KROMER
FRANK MONTEMAGNO
JAMES L. O'HARA
CHRISTOPHER PLUNKETT
ROBERT READS
BERNARD ROSENBERG
GEORGE SCHUCK, JR.
JOHN E. SHEA
HARRY VAN ARSDALE JR.
THOMAS VAN ARSDALE

December 15, 1975

TO ALL PARTICIPANTS

A special meeting of the Joint Industry Board was held on Wednesday night, December 3, 1975 at 6:00P.M., for the purpose of discussing the very serious economic problems affecting both our members and our employers. A number of ideas and suggestions were made which could strengthen and help our industry during these trying times.

One of the questions that arose was whether or not the unemployed members were covered by all of our benefits while they were unemployed.

After some discussion on this question and, in spite of the fact that the income of our Plans have decreased because of the lack of work opportunity for both our employers and our members, the Chairman was requested to communicate with all of our participants indicating that as long as members were "unemployed but available for work" they and their families would be covered by our Industry Benefits.

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7/21/76

S. D. LEIDESDORF & CO.
CERTIFIED PUBLIC ACCOUNTANTS
100 EAST 42ND STREET
NEW YORK, N.Y. 10017

AREA CODE 212 697-0200
TELEX: 12-5278 LEIDESDORF NYK

PENSION, HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY

****

REPORT ON FINANCIAL STATEMENTS

AS AT SEPTEMBER 30, 1975 AND 1974

AND FOR THE YEARS THEN ENDED

S. D. LEIDESDORF & CO.
CERTIFIED PUBLIC ACCOUNTANTS
100 EAST 42ND STREET
NEW YORK, N. Y. 10017
AREA CODE 212 697-0200
TELEX: 12-5270 LEIDESDORF NYK

ACCOUNTANTS' REPORT

To the Pension Committee of the
Joint Industry Board of the
Electrical Industry
Flushing, N. Y.

We have examined the individual statements of assets, liabilities and fund balances of the funds of the Pension, Hospitalization and Benefit Plan of the Electrical Industry as at September 30, 1975 and 1974, and the related individual statements of changes in fund balances for the years then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Inasmuch as the balances in the individual funds are restricted as to use within the respective funds, the combined totals of the funds are presented in the accompanying financial statements for memorandum purposes only.

In our opinion, the aforementioned individual financial statements present fairly the assets, liabilities and fund balances of the individual funds of the Pension, Hospitalization and Benefit Plan of the Electrical Industry at September 30, 1975 and 1974, and the changes in their fund balances for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

S. D. Leidesdorf & Co.

New York, N. Y.
December 16, 1975

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PENSION, HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY

STATEMENTS OF ASSETS, LIABILITIES AND FUND BALANCES

AS AT SEPTEMBER 30, 1975 AND 1974

	1975					1974				
ASSETS	Combined	Elimination	Pension Trust Fund	Loan Fund (Note D)	Welfare Account	Combined	Elimination	Pension Trust Fund	Loan Fund (Note D)	Welfare Account
Cash	$650,687		$568,512	$10,711	$71,464	$1,148,282		$784,806	$29,462	$334,014
Contributions due from contractors	1,049,000				1,049,000	1,206,000				1,206,000
Investments - at cost - Note B	73,692,672		57,161,325		16,531,347	70,330,672		53,105,032		17,225,640
Fixed assets - at cost, net of accumulated depreciation - Note C	1,869,220				1,869,220	1,852,514				1,852,514
Accrued interest receivable	1,612,421		1,230,523		381,898	1,415,999		948,208		467,791
Loans receivable from members - Note D	260,200			260,200		567,081			567,081	
Intra-fund accounts		$883,688	883,688				$335,875	335,336		539
Other assets	19,479				19,479	45,751				45,751
	$79,153,679	$883,688	$59,844,048	$270,911	$19,922,408	$76,566,299	$335,875	$55,173,382	$596,543	$21,132,249
LIABILITIES AND FUND BALANCES										
Checks drawn against future deposits	$82.217				$82,217					
Intra-fund accounts		$883,688			883,688		$335,875		$539	$335,336
Due to affiliated funds	80,949			$25	80,924	$42,272		$8,519	25	33,728
Accrued expenses	114,744		$4,267		110,477	123,381		8,075		115,306
Benefits payable	2,458,036		418,036		2,040,000	2,085,370		531,958		1,553,412
Other liabilities	58,723			19,907	38,816	11,200				11,200
	2,794,669	883,688	422,303	19,932	3,236,122	2,262,223	335,875	548,552	564	2,048,982
Fund Balances - Exhibit B	76,359,010		59,421,745	250,979	16,686,286	74,304,076		54,624,830	595,979	19,083,267
Commitment - Note E										
	$79,153,679	$883,688	$59,844,048	$270,911	$19,922,408	$76,566,299	$335,875	$55,173,382	$596,543	$21,132,249

The accompanying notes are an integral part of these statements.

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PENSION, HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY

STATEMENTS OF CHANGES IN FUND BALANCES

FOR THE YEARS ENDED SEPTEMBER 30, 1975 AND 1974

	1975						1974					
				Welfare Account						Welfare Account		
	Combined	Pension Trust Fund	Loan Fund (Note D)	Total	Regular	Major Medical (Note A)	Combined	Pension Trust Fund	Loan Fund (Note D)	Total	Regular	Major Medical (Note A)
Fund balances as at beginning of year	$74,304,076	$54,604,830	$595,972	$19,083,267	$19,117,404	($34,137)	$65,834,342	$48,992,951	$1,000,000	$15,841,391	$16,113,762	($272,371)
Additions:												
Contributions from contractors	15,308,281	5,283,528		10,024,753	7,901,154	2,123,599	17,870,587	6,210,463		11,660,124	9,213,223	2,446,901
Investment income - Note B	6,119,024	4,620,220		1,498,804	1,498,804		5,157,296	3,850,492		1,306,804	1,306,804	
Rent income (from affiliated fund)	3,600			3,600	3,600		3,600			3,600	3,600	
Other income	2,526	252		2,274	2,274		2,285		972	1,313	1,313	
	21,433,431	9,904,000		11,529,431	9,405,832	2,123,599	23,033,768	10,060,955	972	12,971,841	10,524,933	2,446,901
	95,737,507	64,508,830	595,972	30,612,698	28,523,236	2,089,462	88,868,110	59,053,906	1,000,972	28,813,225	26,638,695	2,174,530
Deductions:												
Pensions paid to members:												
Standard	433,033	433,033					401,804	401,804				
Supplemental	4,263,474	4,263,474					3,744,354	3,744,354				
Disability	329,842	329,842					227,952	227,952				
Death and pension premium benefits	1,803,243			1,803,243	1,803,243		1,663,890			1,663,890	1,663,890	
Hospitalization benefits	3,630,401			3,630,401	3,630,401		2,739,968			2,739,968	2,739,968	
Surgery benefits	1,013,977			1,013,977	1,013,977		934,574			934,574	934,574	
Serious injury benefits	31,318			31,318	31,318		30,636			30,636	30,636	
Major medical benefits - Note A	4,575,151			4,575,151		4,575,151	2,208,667			2,208,667		2,208,667
Bayberryland expenses - rest home - net	260,554			260,554	260,554		231,471			231,471	231,471	
Dental department expenses - net - Note A	895,248			895,248	895,248		736,856			736,856	736,856	
Medical department expenses - net - Note A	1,250,515			1,250,515	1,250,515		940,860			940,860	940,860	
Pensioners' expense	39,752			39,752	39,752		45,814			45,814	45,814	
	18,526,508	5,026,349		13,500,159	8,925,008	4,575,151	13,956,776	4,374,110		9,582,666	7,373,999	2,208,667
Administrative and recordkeeping expenses charged by the Joint Industry Board of the Electrical Industry	771,098	37,388		733,710	733,710		549,728	20,938		528,790	528,790	
Investment advisory fee	43,348	43,348					34,028	34,028				
Rent (to affiliated fund)	8,204			8,204	8,204		6,845			6,845	6,845	
Stationery and supplies	18,004			18,004	18,004		5,120			5,120	5,120	
General expenses	11,213			11,213	11,213		11,415			11,415	11,415	
Depreciation	122			122	122		122			122	122	
Transfer from loan fund to welfare account			345,000	(345,000)	(345,000)				405,000	(405,000)	(405,000)	
	851,989	80,736	345,000	426,253	426,253		607,258	54,966	405,000	147,292	147,292	
	19,378,497	5,107,085	345,000	13,926,412	9,351,261	4,575,151	14,564,034	4,429,076	405,000	9,729,958	7,521,291	2,208,667
Fund balances as at end of year - Exhibit A	$76,359,010	$59,401,745	$250,972	$16,686,286	$19,171,975	($2,485,689)	$74,304,076	$54,624,830	$595,972	$19,083,267	$19,117,404	($34,137)

The accompanying notes are an integral part of these statements.

PENSION, HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY

NOTES TO FINANCIAL STATEMENTS

****

Note A - The Pension, Hospitalization and Benefit Plan of the Electrical Industry ("Plan") was established pursuant to an Agreement dated December 13, 1940. The Plan, which is administered by the Pension Committee of the Joint Industry Board of the Electrical Industry, has as its principal activity, the collection and investment of funds received from electrical contractors for the purpose of providing pension and other benefits under the terms of a collective bargaining agreement between Local Union No. 3 of The International Brotherhood of Electrical Workers, AFL-CIO and the electrical contractors associations and independent electrical contractors ("Employers").

Under the terms of a collective bargaining agreement entered into as of July 1, 1974, substantially all employers will contribute 7% of their weekly payrolls to the Plan. In addition, among other matters, monthly maximum pensions for participants were increased from \$150 to \$210. For all participants now on pension, the monthly payment was increased 50¢ per month for each year of active service. The major changes in the Plan's Comprehensive Hospitalization and Major Medical Plan are summarized as follows:

	Prior	Current
Daily hospital rate	\$75	\$100
Major Medical daily allowance	\$50-\$100	\$75-\$150
Deductible portion of major medical	\$750	\$200
Reimbursement rate	80%	100%
Maximum claim per event	\$15,000	\$50,000

Under the terms of an agreement between the Plan and the Employees Retirement Fund of the Electrical Manufacturing Industry, the Employees Retirement Fund of Illumination Products Industry, the Employees Security Fund (wiring device industry) and the Employees Security Fund of the Electrical Wholesalers Industry ("Combined Pension Funds Account"), the Plan will furnish dental and medical services to eligible participants of each of the aforementioned Funds and be reimbursed for such services provided, as set forth in the agreement.

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PENSION, HOSPITALIZATION AND BENEFIT PLAN
OF THE ELECTRICAL INDUSTRY

NOTES TO FINANCIAL STATEMENTS

e 3 - Investments and investment income consist of the following:

Type of Security	Market as at September 30, 1975	Investments - at Cost, as at September 30,						Investment Income for the Years Ended September 30,					
		1975			1974			1975			1974		
		Combined	Pension Trust Fund	Welfare Account	Combined	Pension Trust Fund	Welfare Account	Combined	Pension Trust Fund	Welfare Account	Combined	Pension Trust Fund	Welfare Account
Marketable securities in Chemical Bank Custodian account:													
Commercial paper and other short-term investments	$2,590,000	$2,590,000	$2,590,000		$2,520,000	$2,520,000		$228,861	$228,861		$243,783	$243,783	
Corporate bonds	6,955,987	8,321,863	8,321,863		8,318,678	8,318,678		636,398	636,398		600,282	600,282	
Common stocks	1,100,800	1,390,787	1,390,787		875,802	875,802		18,285	18,285		16,857	16,857	
United States Treasury bills	647,514	644,334	644,334		1,607,256	1,607,256		85,123	85,123		117,429	117,429	
United States Treasury notes	1,398,705	1,376,452	1,376,452					23,040	23,040				
(Loss) on the sale of investments											(44,218)	(44,218)	
	12,693,006	14,323,436	14,323,436		13,321,736	13,321,736		991,707	991,707		934,133	934,133	
Other marketable securities:													
United States Treasury bonds	392,510	425,000	425,000		1,810,000	1,460,000	$350,000	31,490	29,795	$1,695	115,635	91,330	$24,305
Obligations of United States Government agencies	12,101,645	12,290,681	9,489,789	$2,800,892	14,168,401	10,721,618	3,446,783	1,150,282	859,960	290,322	599,969	434,836	165,133
Corporate bonds	31,407,750	35,779,646	22,263,970	13,515,676	27,267,791	14,748,713	12,519,078	2,798,654	1,692,762	1,105,892	1,495,361	789,172	706,189
Commercial paper	750,000	750,000	750,000					5,187	5,187		33,379	27,607	5,772
AFL-CIO Mortgage Investment Trust	332,545	399,558	199,779	199,779	399,558	199,779	199,779	28,610	14,717	13,893	32,756	17,489	15,267
Gain on sale of investments								368,155	312,880	55,275	96,986	76,986	20,000
	45,034,450	49,644,885	33,128,538	16,516,347	43,645,750	27,130,110	16,515,640	4,382,378	2,915,301	1,467,077	2,374,086	1,437,420	936,666
Total marketable securities	$57,727,456	63,968,321	47,451,974	16,516,347	56,967,486	40,451,846	16,515,640	5,374,085	3,907,008	1,467,077	3,308,219	2,371,553	936,666
Certificates of deposit and other interest-bearing accounts		250,000	235,000	15,000	4,092,335	3,382,335	710,000	131,599	99,872	31,727	1,026,276	856,038	170,238
Other investments:													
Mortgage Investment Trusts		5,922,478	5,922,478		5,479,044	5,479,044		447,387	447,387		426,102	426,102	
Notes, loans and mortgages receivable		3,551,873	3,551,873		3,791,807	3,791,807		165,953	165,953		186,799	186,799	
		9,474,351	9,474,351		9,270,851	9,270,851		613,340	613,340		612,901	612,901	
		$73,692,672	$57,161,325	$16,531,347	$70,330,672	$53,105,032	$17,225,640	$6,119,024	$4,620,220	$1,498,804	$4,947,396	$3,840,492	$1,106,904

PENSION, HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY

NOTES TO FINANCIAL STATEMENTS

****

Note C - Fixed assets consist of the following:

	1975	1974
Land	$142,500	$142,500
Building and improvements	1,765,588	1,706,994
Furniture, fixtures and equipment	294,890	249,692
	2,202,978	2,099,186
Less - accumulated depreciation	333,758	246,672
	$1,869,220	$1,852,514

The provisions for depreciation of $87,086 (1975), $74,572 (1974) are computed on the straight-line method.

Note D - As collateral for these loans, participants have assigned to the Loan Fund their respective equity accounts and death benefits of the Annuity Plan of the Electrical Industry. In addition, participants have designated the Loan Fund as the primary beneficiary of the benefit certificate issued by the Electrical Workers Benefit Society.

In accordance with a determination of the Internal Revenue Service dated December 5, 1972 the Plan agreed to discontinue the activity of making loans to participants from the Loan Fund.

Note E - The premises occupied by the Plan have been leased from the Educational and Cultural Trust Fund of the Electrical Industry for a period ending May 31, 1977, at an annual rental of $120,250 plus certain expenses.

Note F - The Plan is exempt from income taxes under rulings of the Internal Revenue Service of 1944 and 1950.

S. D. LEIDESDORF & CO.
CERTIFIED PUBLIC ACCOUNTANTS
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December 16, 1975

The Pension Committee of the
Joint Industry Board of the
Electrical Industry
Flushing, N. Y.

Gentlemen:

The basic financial statements of the Pension, Hospitalization and Benefit Plan of the Electrical Industry ("Plan"), namely, the individual statements of assets, liabilities and fund balances as at September 30, 1975 and 1974, and the related individual statements of changes in fund balances for the years then ended, and our Accountants' Report on these financial statements, are included in the preceding section of this report.

The data in Schedules 1, 2 and 3, which follow this letter, are presented primarily for supplementary analysis purposes and are not considered necessary for a fair presentation of the Plan's assets, liabilities and fund balances as at September 30, 1975 and 1974, and the changes in their fund balances for the years then ended. Our examination, which is set forth in our Accountants' Report, was made primarily for the purpose of formulating an opinion on the basic financial statements, taken as a whole. However, the data in Schedules 1, 2 and 3 have been subjected to the auditing procedures applied in the examination of the basic financial statements and are, in our opinion, fairly stated in all material respects in relation to these financial statements, taken as a whole.

Very truly yours,

S. D. Leidesdorf & Co.

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SCHEDULE 2

PENSION, HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY

WELFARE ACCOUNT

DENTAL DEPARTMENT EXPENSES - NET

FOR THE YEARS ENDED SEPTEMBER 30, 1975 AND 1974

	1975	1974
Salaries and related benefits:		
Professional salaries	$536,947	$462,604
Clerical salaries	154,458	133,446
Employee benefits	29,587	23,361
Payroll taxes	39,274	35,244
	760,266	654,655
Lab fees	108,911	84,944
Dental supplies	82,578	52,650
Linen and laundry	10,508	8,238
Rent (to affiliated fund) - Note E	57,430	47,915
Insurance	8,110	1,053
Stationery, printing and postage	4,843	2,763
Telephone	2,507	1,637
Maintenance and repairs	7,245	12,334
Depreciation - Note C	6,497	4,247
Miscellaneous	5,815	2,082
	1,054,710	872,518
Less - reimbursement from Combined Pension Funds Account - Note A	159,462	135,662
Total - Exhibit B	$895,248	$736,856

The notes referred to above are included in the preceding section of this report.

SCHEDULE I

PENSION, HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY

WELFARE ACCOUNT

BAYBERRYLAND EXPENSES - REST HOME - NET FOR THE YEARS ENDED SEPTEMBER 30, 1975 AND 1974

****

	1975	1974
Salaries and related benefits:		
Salaries	$13,812	$13,486
Employee benefits	1,590	1,572
Payroll taxes	832	793
	16,234	15,851
Property taxes	98,154	89,456
Light, heat and power	39,006	33,126
Insurance	10,789	9,200
Maintenance and repairs	31,300	21,298
Publications	1,750	7,469
Linen and laundry	6,607	6,651
Miscellaneous	17,295	14,085
Depreciation - Note C	63,419	58,335
	284,554	255,471
Less - rental income (from affiliated fund)	24,000	24,000
Total - Exhibit B	$260,554	$231,471

The note referred to above is included in the preceding section of this report.

PENSION, HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY

WELFARE ACCOUNT

MEDICAL DEPARTMENT EXPENSES - NET

FOR THE YEARS ENDED SEPTEMBER 30, 1975 AND 1974

	1975		1974	
Salaries and related benefits:				
Professional salaries and fees		$368,894		$300,574
Clerical salaries		258,485		208,632
Employee benefits		40,637		30,989
Payroll taxes		35,566		30,087
		703,582		570,282
Laboratory fees		186,028		129,356
Medical supplies		72,759		44,290
Linen and laundry		7,910		5,077
Rent (to affiliated fund) - Note E		71,104		59,323
Insurance		15,442		922
Stationery, printing and postage		5,742		4,270
Telephone		5,059		2,866
Maintenance and repairs		1,413		538
Depreciation - Note C		17,048		11,867
Temporary office help		5,385		
Miscellaneous		12,807		4,631
Optical expenses:				
Salaries and related expenses	$67,440		$57,599	
Optical devices and supplies (net)	150,781	218,221	110,146	167,745
		1,322,500		1,001,167
Less - reimbursement from Combined Pension Funds Account - Note A		71,985		60,307
Total - Exhibit B		$1,250,515		$940,860

The notes referred to above are included in the preceding section of this report.

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PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

STATEMENT OF ASSETS, LIABILITIES AND FUND BALANCE

JANUARY 31, 1976

ASSETS

CURRENT ASSETS:		
Cash	179,315	
Receivables	1,625,948	1,805,263
INVESTMENTS:		
Certificates of Deposit, Short Term Investments	15,000	
U.S. Treasury Notes, Bonds, Bills and Federal Agencies	2,345,352	
E.C.H. Holding Corporation - Stock	142,500	
A.F.L. - C.I.O. Mortgage Investment Fund	199,779	
Corporate Bonds	12,334,530	15,037,161
FIXED ASSETS:		
Furniture and Fixtures - Net of Accumulated Depreciation	83,373	
E.C.H. Development and Construction - Net of Accumulated Depreciation	1,643,346	1,726,719
TOTAL ASSETS		18,569,143

LIABILITIES AND FUND BALANCE

Accrued Expenses Payable	2,090,306	
Other Liabilities	919,689	3,009,995
FUND BALANCE - January 31, 1976		15,559,143
TOTAL LIABILITIES AND FUND BALANCE		18,569,143

A563

PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

STATEMENT OF CHANGES IN FUND BALANCE

OCTOBER 1, 1975 TO JANUARY 31, 1976

Fund Balance - October 1, 1975			16,636,286
ADDITIONS:			
Receipts from Contractors		2,637,632	
Net Interest Income Earned		431,082	
Return of Fund Balance from Loan Fund		30,000	3,098,714
			19,735,000
DEDUCTIONS:			
Expenses Paid Directly to Members for Major Medical, Hospitalization, Surgery, Injury, Dues & Insurance Benefits	3,064,068		
E.C.H. Expenses	86,904		
Dental Department	288,778		
Medical Department	314,650		
Consultant Fees	43,127		
Optical Department	71,897	3,869,424	
ADMINISTRATIVE EXPENSES:			
Payroll Expenses	49,091		
Rent	40,083		
Administrative and Record Keeping Expense Paid to Joint Industry Board	260,000		
Miscellaneous Expense	7,254	356,428	(4,225,852)
FUND BALANCE - January 31, 1976			15,509,148

A564

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PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

STATEMENT OF ASSETS, LIABILITIES AND FUND BALANCE

MARCH 31, 1976

ASSETS

CURRENT ASSETS:		
Cash	$ (341,493)	
Receivables	1,625,211	$ 1,283,71
INVESTMENTS:		
Certificates of Deposit. Short Term Investments	15,000	
U.S. Treasury Notes, Bonds, Bills and Federal Agencies	2,238,731	
E.C.H. Holding Corporation - Stock	142,500	
A.F.L. - C.I.O. Mortgage Investment Fund	199,779	
Corporate Bonds	11,188,031	13,784,041
FIXED ASSETS:		
Furniture and Fixtures - Net of Accumulated Depreciation	83,373	
E.C.H. Development and Construction - Net of Accumulated Depreciation	1,643,346	1,726,71
TOTAL ASSETS		$16,794,47

LIABILITIES AND FUND BALANCE

Accrued Expenses Payable	$ 2,090,306	
Other Liabilities	429,559	$ 2,519,865
FUND BALANCE - MARCH 31, 1976		14,274,61
TOTAL LIABILITIES AND FUND BALANCE		$16,794,47

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PENSION COMMITTEE OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

STATEMENT OF CHANGES IN FUND BALANCE

OCTOBER 1, 1975 TO MARCH 31, 1976

Fund Balance - October 1, 1975			$16,686,2
ADDITIONS:			
Receipts from Contractors		$3,937,498	
Net Interest Income Earned		630,163	
Return of Fund Balance from Loan Fund		60,000	4,627,661
			21,313,947
DEDUCTIONS:			
Expenses Paid Directly to Members for Major Medical, Hospitalization, Surgery, Injury, Dues & Insurance Benefits	$5,396,040		
E.C.H. Expenses	92,976		
Dental Department	393,524		
Medical Department	440,617		
Consultant Fees	67,004		
Optical Department	98,281	6,488,442	
FUND BALANCE - MARCH 31, 1976			
ADMINISTRATIVE EXPENSES:			
Payroll Expenses	85,909		
Rent	60,125		
Administrative and Record Keeping Expense Paid to Joint Industry Board	390,000		
Miscellaneous Expense	14,858	550,892	(7,039,3
			14,274,

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October 15, 1975

MEMO TO: Hon. Armand D'Angelo

FROM: Robert R. Collins

RE:

The following is a summary report of phone conversations between myself and persons who deal with pension and welfare funds of the organizations as they are listed. I have never personally met with any of them before introducing myself over the phone, so I subsequently had the feeling that there was a certain air of non-full disclosure of fact. I might add, that they were all extremely polite and personable to me.

PLUMBERS LOCAL #1 - It was their policy to pay welfare benefits up to four months while a man is unemployed. They have since extended that period to six months. A meeting of trustees and representatives is being called shortly to determine further policy. Conversation was with Mr. Palmo Dacunto. Phone No. (212) 869-1970.

PLUMBERS LOCAL #2 - In a conversation with Mr. Gene Murray, he indicated that there was no reduction or cut off of benefits while a man is unemployed. Phone No. (212) 533-1400.

ENTERPRISE ASSOCIATION #638-(Steamfitters)- Up until October 1, 1975, all benefits were being paid. After that date benefits will be paid in proportion to the cash inflow to the welfare fund.

SHEETMETAL WORKERS LOCAL #28 - It has been policy up to now to carry a man's benefits for two years while he was unemployed and his dues were being paid. A special meeting of the trustees of their funds is being called to consider reduction in coverage to each individual member such as a cut in the number of days of coverage for hospitalization, vacation time reduction, etc.

CARPENTERS DISTRICT COUNCIL - Benefits were being paid up to six months as of last year, but a decision was made to extend each members coverage for an additional six months. In November of this year, a special meeting is being called with their actuaries to establish further procedures. This information was given to me by Mr. Tom Mazziotta. Phone No. (212) MU-5-2546.

OPERATING ENGINEERS LOCAL #14-143 - At present all benefits are being paid to all members who qualify upon application. This information is per Mr. Jack Stanton. Phone No. (212) 939-0500.

I.B.E.W. LOCAL #501 - In speaking with Mr. Al Hauschild, he indicated that a member was presently being carried with full benefits for a period of five calander quarters (15 months) while unemployed. Phone No. (914) 948-3344.

I.B.E.W. LOCAL #25 - As per Mr. George McKee of the Pension and Welfare Fund, benefits have been reduced on all members. A member has the option of paying into and maintaining his fund. A member is eligible for benefits while collecting unemployment --- if he qualifies.

Respectfully submitted,

Robert R. Collins
Pension Director

RRC:ls

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April 23, 1976

MEMORANDUM

TO: Mr. Armand D'Angelo

FROM: Mr. John Calascibetta

RE: Hospitalization, Surgical & Major Medical Benefits

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1. Hospitals, secure in the fact that they will be paid, will not require advance deposits from members, which will result in a benefit for our members.

2. We have had numerous discussions with various hospitals, and it is our belief that we can negotiate an approximate 20% reduction in the hospital bills. This applied to the anticipated expenditure of 5 million dollars will result in a 1 million dollar saving to the Fund.

3. The proposed method for payment would be to issue the hospital check with a dual endorsement and forward the check to the member. The member thereby retains the privilege of signing the check and forwarding it to the hospital or holding back payment if problem exists with the hospital, but he cannot cash the check himself. We do not propose to assign payments to doctors or pharmacists, so the payment for those expenses will be made to the member directly.

JC:js

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[illegible] 7/21/76

CERTAIN FACTS HAVE COME TO MY ATTENTION WHICH AT THIS TIME MAKES IT NECESSARY FOR ME TO MAKE THIS STATEMENT.

OUR CONCERN IS ONLY WITH THE MEMBERS AND THEIR FAMILIES CURRENTLY UNDER TREATMENT AND THOSE WE WILL TREAT IN THE FUTURE. WE ASSUME THAT THIS IS YOUR PRIMARY CONCERN AS WELL AS OURS. AS PROFESSIONAL MEN ENGAGED IN THE TREATMENT AND HEALTH CARE OF PEOPLE, THIS SHOULD BE YOUR PARAMOUNT CONSIDERATION.

WE ARE FULLY AWARE OF THE OUTSIDE ACTIVITIES THAT ARE CURRENTLY BEING CONDUCTED BY SOME OF YOU.

WE FEEL VERY STRONGLY THAT ANY ATTEMPT TO USE OUR MEMBERS AS A BARGAINING POINT IS THE MOST REPREHENSIBLE CONDUCT IMAGINABLE.

ANY DELIBERATE DEGENERATION IN THE QUALITY OF CARE PROVIDED TO OUR MEMBERS WILL BE DEALT WITH SUMMARILY.

IT IS UNIMAGINABLE TO ME THAT ANY PROFESSIONAL MAN WOULD STOOP TO A LEVEL OF THE USE OF THEIR PATIENTS FOR PERSONAL GAIN.

IF ANYBODY PRESENT DISAGREES WITH WHAT I HAVE SAID, I WOULD WELCOME THE OPPORTUNITY TO SPEAK TO THEM IN MY OFFICE.

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